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PROMOTION AND PROTECTION OF THE RIGHTS OF CHILDREN

Sale of children, child prostitution and child pornography

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 48/156 of 20 December 1993, the provisional report prepared by Mr. Vitit Muntarbhorn, Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography.

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INTRODUCTION

1. The mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography was first created in 1990 by the Commission on Human Rights for one year in its resolution 1990/68. The Economic and Social Council, in its decision 1990/240, confirmed the mandate and extended it to cover a period of two years. Accordingly, the Special Rapporteur submitted his annual reports (E/CN.4/1991/51 and E/CN.4/1992/55 and Add.1) to the Commission on Human Rights at its forty-seventh and forty-eighth sessions. In its resolution 1992/76, the Commission renewed the mandate for a further period of three years, which was approved by the Economic and Social Council in its decision 1992/244. The Special Rapporteur presented further reports to the Commission at its forty-ninth session (E/CN.4/1993/67) and at its fiftieth session (E/CN.4/1994/84).

2. The General Assembly, in its resolution 48/156 of 20 December 1993, invited the Special Rapporteur to submit a provisional report to the Assembly at its forty-ninth session. The present interim report is submitted in response to that invitation. It is the first report submitted under this mandate to the General Assembly and it has three principal aims:

(a) To take stock of the Special Rapporteur's work since the inception of his mandate;

(b) To highlight recent developments concerning the sale of children, child prostitution and child pornography, particularly those which came to the Special Rapporteur's attention during 1993 and the first half of 1994;

(c) To make recommendations to the General Assembly and other concerned entities for more concrete action.

3. At the outset, the methodology adopted by the Special Rapporteur, based upon a six-pronged approach, should be noted.

4. First, documentary and other information is obtained throughout the year from both governmental and non-governmental sources. This provides the basis of the annual global reports submitted by the Special Rapporteur to the Commission on Human Rights. To date, as mentioned above, four global reports have been submitted.

5. Second, periodically a questionnaire and/or a letter seeking specific information aimed at collecting country responses to the situation is sent to the Governments of a broad range of countries and to other concerned entities. The responses received are included in the annual reports of the Special Rapporteur.

6. Third, country missions are undertaken to make the mandate more accessible to local people, especially children, and to reflect the latter's priorities in the Special Rapporteur's recommendations to the United Nations. The countries visited are selected on a balanced geographical basis, alternating, where possible, between developing and developed countries so as to illustrate the

global nature of the sale of children. So far, four country visits have been undertaken, to the Netherlands, Brazil, Australia and Nepal. A visit to Senegal is planned for the second half of 1994. North America remains a region to be covered by a country visit in the future. Reports of the country missions are usually issued as an addendum to the annual reports to the Commission of the Special Rapporteur.

7. Fourth, the process of intervening on behalf of individuals where there are allegations of human rights violations of relevance to the mandate continues throughout the year. The communications addressed to Governments in this respect and their responses are included in the Special Rapporteur's annual reports. A key concern is that many Governments fail to reply to the communications. Even where there are replies to the communications, effective action and follow-up on the part of the authorities are at times lacking.

8. Fifth, in 1994 the Special Rapporteur began to provide advisory opinions to various national authorities seeking advice on issues covered by the mandate raised at the national level. For instance, in 1994 the Swedish Children's Ombudsman sought the advice of the Special Rapporteur on the issue of criminalization of possession of child pornography. That request and the Special Rapporteur's advice are provided later in this report.

9. Sixth, throughout the year, the Special Rapporteur interlinks with key agencies and other relevant entities to brief them on his activities and to promote more effective cooperation and coordination with a view to mobilizing public and private action to protect children world wide. For instance, throughout 1993-1994, he maintained dialogue with the United Nations Children's Fund (UNICEF), the International Labour Organization (ILO), the World Health Organization (WHO) and the International Criminal Police Organization (INTERPOL), to share information. He attended the World Conference on Human Rights, held at Vienna in June 1993, and called for more commitment to counter the sale of children, child prostitution and child pornography. During the past year, he briefed the Committee on the Rights of the Child on issues of concern to the mandate, with emphasis on the economic exploitation of children, the Committee's theme for 1993. He also established interchanges with the Working Group on Contemporary Forms of Slavery of the Subcommission on Prevention of Discrimination and Protection of Minorities, and with the Subcommission itself. In 1994, he participated in a meeting between special rapporteurs to coordinate activities. He attended meetings world wide organized by governmental and non-governmental sectors in order to help promote action on behalf of children. The Special Rapporteur expresses his special thanks to both the governmental and non-governmental sectors which have provided complementary support in this regard.

10. At this juncture, two caveats should be lodged. First, increasingly the Special Rapporteur is facing difficulties in fulfilling this mandate owing to insufficient facilities and other support, resulting in less-than-expeditious action by many entities concerned with assisting the Special Rapporteur in his work. The Centre for Human Rights, which services this mandate and which acts as a coordinator for the Special Rapporteur, is very overstretched. The Centre has limited infrastructure and an increasing workload in servicing the proliferation of human rights mandates and other activities. Second, the

Special Rapporteur has been requested to make his report more concise than previously in order to comply with the general rule on document length. This will have impact on the length of all future reports by the Special Rapporteur. However, as the mandate of the Special Rapporteur covers a broad range of topics, namely the sale of children, child prostitution and child pornography, on a world-wide basis, the annual reports should be of a realistic length. The issue of their length should not detract from the content of the monitoring process which the Special Rapporteur endeavours to provide on behalf of children world wide.

I. SALE OF CHILDREN

11. Various definitional issues concerning the words "sale" and "child" were discussed in the Special Rapporteur's previous annual reports referred to above and will not be re-examined here. Suffice it to note that the definition given in article 1 of the Convention on the Rights of the Child is as follows: "... a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier".

12. The working definition adopted by the Special Rapporteur for "sale of children" is "the transfer of a child from one party (including biological parents, guardians and institutions) to another, for whatever purpose, in exchange for financial or other reward or compensation". The categorization adopted by this mandate is fourfold: adoption for commercial purposes; exploitation of child labour; organ transplantation; and other forms of sale. The last category has been interpreted under this mandate to include, but not be limited to, abductions and disappearances, and child soldiers.

13. Despite various innovations in law-making noted below, at times the scenario verged on the incredible in 1993. For example, in one case, the press reported that a destitute woman whose husband had deserted her sold her one-day-old baby for 75 cents. 1/ In another case, a singer who had incurred large gambling debts murdered his 11-year-old daughter so as to make money from selling her corpse. 2/

A. Adoption for commercial purposes

14. The period 1993-1994 witnessed various welcome initiatives, particularly the finalization of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, to counter sale of children by reason of adoption for commercial purposes. However, the situation remains disconcerting, particularly in Eastern Europe and Central and South America, where there were continuing reports of the sale of children. There was a close linkage with abductions and disappearances. Technological advances in the field of reproductive technology, such as in the areas of surrogacy and *in vitro* fertilization, provided continuing cause for concern.

1. International developments

15. The Convention on the Rights of the Child encapsulates many primary principles concerning adoption. It calls for authorization of the adoption by the competent authorities, and exploration of adoption possibilities in the country of origin before intercountry adoption is considered ("subsidiarity") and action against "improper financial gain" (art. 21). The predominant principle is that of the best interests of the child. There has been nearly universal accession to the Convention; those countries which have not acceded to it are encouraged to do so. The Committee on the Rights of the Child established under the Convention also plays a key role in monitoring all aspects of children's rights, including those concerning adoption.

16. The provisions of the Convention that are relevant to the Special Rapporteur's mandate have been strengthened by the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography adopted by the Commission on Human Rights in 1992. Although the Programme of Action is not limited to sale for adoption, certain of the measures it promotes are most pertinent to the issue. These include information campaigns to warn people about abuses; investigations to expose abuses; education to prevent, identify and expose abuses; improved legal measures and law enforcement, particularly to curb sale and trafficking by clients and intermediaries; social measures and development assistance for communities; rehabilitation and reintegration of victims abuse; international coordination and exchange of information with appropriate databanks.

17. The Programme of Action highlights the following premises in regard to adoptions: intercountry adoptions should only take place through competent, professional and authorized agencies in both the country of origin and the receiving country; procedures for child birth registration and consent or renunciation by parents should be regulated by law; alternatives to intercountry adoptions, including the provision of support services to parents to enable them to keep their children, foster care and local adoptions, should be explored.

18. In 1993, Governments began to respond to the Programme of Action. However, their statements tended to provide a legalistic analysis rather than examples of practical problems of implementation. There was evidently a lack of dissemination of the Programme of Action in many settings.

19. The World Conference on Human Rights provided an additional impetus to counter child exploitation linked with the sale of children. The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993, contained a call for universal ratification of the Convention on the Rights of the Child by 1995 and its effective implementation through legislative, administrative and other measures, and for strengthening programmes to protect:

> "the girl child, abandoned children, street children, economically and sexually exploited children, including through child pornography, child prostitution or sale of organs, children victims of diseases including acquired immunodeficiency syndrome, refugee and displaced children,

children in detention, children in armed conflict, as well as children victims of famine and drought and other emergencies." 3/

20. A most significant development in 1993 was the finalization of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. It posits the need to help children remain with their biological parents. Where this is not possible, adoption should be considered, based upon the child's best interests. Local adoption should be explored first and, failing that, intercountry adoption; this is known as the "subsidiarity rule". In this context, there is a need to regulate the operations of intermediaries, such as private adoption agencies, by ensuring that they are accredited and monitored by state authorities. The new Convention promotes the provision of counselling facilities; assessment of the suitability of the adoptive parents; designation of a central authority in each State to coordinate with other States parties; accreditation of intermediary organizations without profit motives; and mutual recognition of foreign adoptions.

21. This Convention concretizes further many concerns expressed in the Convention on the Rights of the Child, particularly in relation to profiteering:

> "[There is] not only a prohibition of obtaining 'improper financial or other gain' from an activity related to an intercountry adoption (as in the United Nations Convention) but also unusually precise restrictions on compensation: only costs and expenses, including reasonable professional fees, may be charged or paid and directors and staff of agencies concerned must not receive 'unreasonably high' remuneration." 4/

22. How effective the Convention will be will depend, to a large extent, upon how many countries ratify it and how they implement it. Much also hinges on the designation of effective central authorities in each country to supervise the implementation process. This may imply the identification and use of existing national focal points on children rather than the establishment of new entities, in view of the need to maximize the use of existing resources. This is conditioned by the challenge that if these authorities delegate too many of their functions to other agencies, their supervisory role will be weakened. Preferably they would work only with accredited agencies.

23. On a related front, in so far as the transfer of children may be linked with abductions, the Hague Convention on the Civil Aspects of International Child Abduction 1980 assists in tracing abducted children and facilitating their return. The Convention allows the police to intervene where a child is kidnapped, even in the absence of a court decision. The question of the limited number of States parties to the Convention needs to be addressed: there should be universal accession to this Convention.

24. The existence of various armed conflicts has led to the separation of many children from their parents. The conflict in Rwanda is a key case in point. In this respect, it is imperative to assist the children to trace their relatives before any consideration of adoption or the equivalent by outsiders. In 1994 the International Committee of the Red Cross and the Office of the United Nations High Commissioner for Refugees issued a joint statement on the

evacuation of unaccompanied children from Rwanda which contains a universal message:

> "Evacuation, reception and care should be planned with a view to the earliest reunification between children and their relatives. It must be clearly explained to guardians or foster parents that the objective is to return the child to his or her family as soon as the situation permits. Evacuation of children to neighbouring countries should be explored before consideration is given to taking them to third countries. Evacuations from a neighbouring country to a third country should not be undertaken unless the children face security risks or no suitable care is available. The best interests of the child must be the paramount consideration in the choice of destination as well as in arrangements for care.
>
> "Children in an emergency context are not available for adoption. Since most unaccompanied children are not orphans, what they need is suitable interim care with a view to possible reunification with their families, not adoption. Staying with relatives in extended family units is a better solution than uprooting the child completely. Serious efforts to trace family members are essential before a child is considered eligible for adoption ... Adoption should not be considered unless a reasonable time (normally at least two years) has passed during which all feasible steps to trace the parents or other surviving family members have been taken."

25. This approach was reinforced in the Declaration and Recommendations on the Rights of Children in Armed Conflict (The Declaration of Amsterdam) adopted by the Conference on the Rights of Children in Armed Conflicts in June 1994, which specified:

> "3.8 ... The Conference also supports the UNHCR/UNICEF joint statement on The evacuation of children in conflict areas of December 1992, which states ...: 'Adoption should be carried out in accordance with article 21 of the Convention on the Rights of the Child. Adoption should not be considered if (a) there is hope of successful tracing or evidence that the parents are still alive, (b) it is against the express wishes of the child or the parent, or (c) unless a reasonable time (at least two years) has passed to allow for tracing information to be gathered. Staying with relatives in extended family units is a better solution than uprooting the child completely.'"

2. National developments

26. Europe remained in the headlines throughout the year in relation to both supply of and demand for children for commercial adoptions. Several instances in Eastern Europe highlighted the clandestine market in various Eastern European countries as part of the supply factor. In 1993 in Poland a man was arrested for buying children to be exported for adoption in the West. A Warsaw district attorney was reported as stating that pregnant women who could not keep their babies for socio-economic reasons sold them for US$ 900 each. 5/ A new law has been drafted to counter this trade.

27. The Government of the Czech Republic, in its reply to the Special Rapporteur's request for information in 1993, noted as follows:

> "The interest of foreigners in adopting children from countries of the former Eastern bloc has lately increased enormously. The Czech Republic too is in the centre of this interest. Persons from the United States, Sweden, Italy, the Federal Republic of Germany and other countries interested in adopting a child, believe in the existence in the Czech Republic of a great number of deprived children needing their help ... The mass media follow the so-called sale of Czech children abroad."

28. Reports of the sale of children from Russia to Western countries, for between US$ 10,000 and 50,000 per child, led to a partial clamp-down on intercountry adoptions by the Russian administration at the end of 1992. 6/ In accordance with a new Russian law, only children with medical or developmental problems so severe that they are rejected by Russian couples may be adopted by foreigners.

29. Romania is also considering the possibility of introducing a new law to overcome the lacunae in a 1990 law on intercountry adoption which established a national committee to oversee such adoptions. The proposed new law would:

> "restrict intercountry adoption to children who have been in an institution for at least six months, thus making it impossible for a child to be given up directly by his or her family for adoption abroad; [and] make it compulsory for foreigners or Romanian citizens living abroad to notify their desire to adopt to the central authority or an accredited agency of their country of residence, which alone will be authorized to submit to the Romanian Committee on Adoption". 7/

30. The call for legislation on adoption in Eastern European countries is growing louder, partly as the result of a regional seminar for Eastern and Central Europe to promote implementation of the Convention on the Rights of the Child, convened in Sofia in 1992. The seminar noted the following situations concerning intercountry adoptions:

> "Poland: There is no particular reference in Polish legislation to intercountry adoptions;
>
> "Lithuania: The law governing intercountry adoption is just at an initial stage;
>
> "Bulgaria: The regulations guiding intercountry adoption were published on 2 August 1992;
>
> "Latvia: There is presently no legal document to regulate intercountry adoptions." 8/

31. The conflict in the former Yugoslavia has heightened the tension concerning the potential sale of children for adoption. In March 1993, an international mission to study the situation in Croatia, Bosnia and Herzegovina and in the Federal Republic of Yugoslavia (Serbia and Montenegro) called upon the

international community and the Governments of the region to monitor trafficking of children due to the hostilities in the region, and made the following suggestions:

> "Since the numbers of orphaned children in need of alternative family care are small, and the States of the region are still capable of taking care of those few children, there is no need for intercountry adoptions to countries outside the region on any significant scale. Governments and international organizations should inform the public accordingly. All local concerned institutions should keep records of any enquiries made by agencies to organize private adoption and/or evacuation of children from [areas of] conflict to other areas." 9/

32. The situation of children born to rape victims, particularly those of the Muslim community in Bosnia, raises the dilemma of whether adoptions would be desirable. The community response so far has been against adoptions by people who do not belong to the community concerned, and young men from the community have been encouraged to marry the single women affected by these traumas of war. 10/

33. Trafficking of children for adoption purposes was also reported from sources in Greece and Turkey. Investigations are pending concerning allegations against a British national in regard to the sale of children in Turkey.

34. Self-scrutiny has emerged as a necessity in regard to those European countries which are at the receiving end of intercountry adoptions. For example, at the end of 1992, it was reported that an adoptive father of Swiss origin had sexually abused his two children adopted from India. 11/ Difficulties encountered by France are noted in its recent report to the Committee on the Rights of the Child as follows:

> "[Intercountry adoption] is particularly prevalent in France, which comes second after the United States among the countries of adoption in terms of absolute numbers of children.
>
> "The similarities in the situation in East European countries and South American countries have been noted by the media, which are reporting with greater frequency on the often dramatic circumstances in which children are taken in. The situation is conducive to all kinds of abuses, of which children are the primary victims, and the countries of origin, confronted with other emergencies, are not always capable of ensuring their protection.
>
> "Would-be adoptive parents, insufficiently informed about the situation in the foreign country and the implications of intercountry adoptions, sometimes yield to financial pressures without receiving any guarantees. The proliferation of such situations leads to 'high-risk' adoption conditions borne, in the final analysis by the children and the prospective parents ...
>
> "Authorization in the case of a foreign child is not a requirement for the granting of adoption rights by French courts. Individuals who are not

in possession of such authorization may thus embark upon an adventure for which they are ill-prepared ...

"[It is] necessary for France's mechanisms to be improved in order to give these children the same guarantees as those available to children adopted in France." 12/

35. On a related front, at the end of 1992, it was reported that French police had uncovered the trafficking of children from Zaire to France to various families, at times posing as refugees, aimed at benefiting from social security.

36. Other European countries have become more conscious of the need to counter child trafficking in the guise of adoptions. In its reply to the Special Rapporteur's request for information, the Government of Spain stated that the Programme of Action for the Prevention of the Sale of Children was being implemented in Spain, and a new penal code had been drafted that contained provisions to counter fictitious delivery and false paternity, and trafficking through adoption. A seminar held in the Netherlands in 1993 led to the establishment of EURADOP, a European agency to bring together official adoption agencies from nine countries with a view to drafting a code of ethics among practitioners concerning intercountry adoptions. 13/ The United Kingdom is now considering legislation to criminalize the acts of those who bring children into the country for adoption without having obtained prior authorization from the British authorities.

37. Central and South America remains a key area in regard to abuse in intercountry adoptions, despite new legislation to prevent such abuse. Positive steps taken by countries in the region include the following. Bolivia promulgated a new Juvenile Code at the end of 1992, stipulating that children are not to leave the country for the purpose of adoption unless a juvenile court judge has given its approval. Intercountry adoptions initiated by private couples are no longer permitted; only accredited international agencies working with the approval of the Bolivian Government can be involved in the process. Various persons found guilty of trafficking in children for adoptions were convicted in Bolivia in 1991 and 1992.

38. Peru has also moved towards revising its laws to accord greater protection to children in this area. In 1993, the Standing Commission on Women's and Children's Rights was established by Supreme Decree No. 038-93-Jus. There is also a new Code for Children and Adolescents.

39. However, the situation remained nebulous in various countries. In 1992 and 1993, a number of babies were recovered in Paraguay, allegedly about to be adopted in North America. Early in 1994, information was received concerning a police raid in Guatemala which freed children illegally trafficked for adoption. There were increasing reports of disappearances of children in Honduras, and these may have close links with trafficking for adoptions. In the reply by the Government of Honduras to the Special Rapporteur's request for information, the position is stated as follows:

"In the case of sale for adoption, we are faced with a very special situation: every sale implies a price, and neither the expenses incurred

in the procedure, nor the fees paid for representation before the courts can be considered as such. We have to admit, however, that as in every country, there are individuals who enrich themselves out of others' needs ... It is against these immoral people that an open campaign has been launched, to stop them from continuing with their unlawful activities. The Government of Honduras has set up an Interinstitutional Commission which looks into the case of each child to be given for adoption. The Commission includes such worthy institutions as the Bar Association of Honduras, and is chaired by the First Lady."

40. Perhaps the most tense situation concerned adoptions from Brazil. In 1993, a report presented in the European Parliament contained an allegation to the effect that some 3,000 children adopted from Brazil had been channelled into a market for organ transplants in Europe, primarily in Italy. 14/ Brazilian magistrates decided to suspend intercountry adoptions until the matter was clarified. Subsequently, Italy denied this allegation. Interestingly, prior to this furor, the Brazilian Government had informed the United Nations of various innovative steps taken to counter the sale of children, inter alia the establishment of computer databases on international adoptions; investigation of all acts prior to authorization of adoptions; improved control over the procedures for issuing passports to adopted minors; enhanced cooperation with INTERPOL; control of the departure from Brazil of pregnant women in order to check if, when they re-enter the country, their new-born babies are with them; the establishment of a register of international agencies for international adoption active in Brazil; and the transmission to the executive, legislative and judicial branches of government of all information concerning child trafficking. 15/

41. The 1993 incident deserves continued monitoring and vigilance, and public inquiries in all the relevant countries.

42. It is disquieting that the United States, as the country of destination of a great number of children adopted in an intercountry context, has no national focal point to monitor abuses in this area, all the more so as, according to information received, some private adoption agencies based in the United States have been involved in the trafficking of children. During the year there was also a reported instance of a couple in the United States who, for reasons of economic need, tried to sell their children for $20,000.

43. In 1993, the Special Rapporteur requested the United States authorities to clarify whether there was an official trend in the United States supportive of the position that adoption in the United States of children illegally abducted from other countries would not be nullified, thereby implying that children could be adopted by their abductors. To date, no reply has been received concerning this request for clarification.

44. On a related front, the freedom with which individuals in the United States can sell their body for surrogacy purposes is disturbing and is linked with the sale of children. The press reported in 1993 that in Houston a woman had advertised her "womb-for-rent" services as follows (on a traffic sign board): "Womb for rent. Educated, healthy, loving, surrogate mother available." 16/ Some $10,000 were sought for the surrogacy arrangement.

45. Increasingly, Asian countries have moved towards strict legislation of intercountry adoptions and measures against trafficking of children. In 1992, the Philippines promulgated Republic Act No. 7610 providing for stricter deterrence and special protection against child abuse, exploitation and discrimination. Article IV of the Act establishes severe penalties for child trafficking. In 1992 Sri Lanka amended its adoption law so as to prohibit private unregistered institutions or persons from arranging intercountry adoptions. Now only the Commissioner of Probation and Child Care can allocate children for adoption abroad.

46. In 1993, Myanmar adopted a new Child Law, a provision of which states: "The adoptive parents shall be responsible for the care and custody of the child to ensure that there is no abduction to a foreign country, sale or trafficking".

47. Nevertheless, reports of trafficking are still being received. For example, there are continuing reports of child abductions from Thailand into neighbouring Malaysia where the children are sold to childless couples. In Cambodia, in 1992, the press reported trafficking of babies destined for the United States, in which a Hawaii-based adoption agency was involved. 17/

48. The Government of Israel, in its reply to the Special Rapporteur's request for information, observed that there were a few cases of babies or pregnant women being taken abroad, in order for the babies to be sold for adoption. The police were investigating this kind of case.

49. In regard to Africa, the numbers of children involved in intercountry adoptions remain small. However, as in the case of trafficking of children from Zaire to France for social security purposes noted above, there may be hidden cases of abuse.

50. In regard to Australia, in 1993 the Special Rapporteur's attention was drawn to the continuing challenge posed by Aboriginal children forcibly displaced from their families under the Aboriginal Protection Act 1883-1969, which resulted in much social disruption and dislocation. This situation calls for more facilities to trace their heritage, and for their reculturation, reparenting and community-based rehabilitation.

51. The above scenario suggests that although laws exist to prevent abuses in regard to adoption, there are serious loopholes in their monitoring and implementation, some of them resulting from the historical context, others from the development of modern forms of exploitation.

B. Exploitation of child labour

52. It is the exploitation of child labour rather than child labour per se which is objectionable. Extensive information on this subject has been gathered by the International Labour Organization, and it is not the intention of the Special Rapporteur to duplicate this work. On a related front, the recent appointment by the Subcommission of a Special Rapporteur to study the issue of the exploitation of child labour and child bondage is warmly welcomed, and her

close cooperation with the Special Rapporteur on the sale of children, child prostitution and child pornography is invited to ensure complementarity of work.

53. The approach of this mandate is to recognize that the exploitation of child labour is a form of sale of children, and to highlight new aspects which came to light in 1993, while complementing and reinforcing other relevant mandates.

1. International developments

54. The International Labour Organization (ILO) has developed a series of conventions and recommendations on the exploitation of child labour. Convention No. 138 establishes 15 as the basic minimum age of employment, although reductions to 14 may be possible in developing countries. The ILO conventions and recommendations have been strengthened by the Convention on the Rights of the Child, which calls for the stipulation of a minimum age, the regulation of working conditions, and appropriate penalties for exploitation. In the case of migrant workers, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families also protects migrant workers in irregular situations, such as those employed without proper documents in another country; they retain their rights vis-à-vis their employers, even in such a context.

55. In 1993, the Commission on Human Rights adopted the Programme of Action for the Elimination of the Exploitation of Child Labour. The Programme of Action advocates a number of measures which should be implemented, particularly at the national and local levels. These include the following:

Information campaigns to raise awareness of the problem;

Educational and vocational training to prevent child labour exploitation;

Social action to help families and their children;

Development aid;

Stipulation and application of labour standards;

The adoption by States of appropriate policies and programmes, for example, provision of primary education for all;

Support from international agencies.

56. The International Labour Office, within its Interdepartmental Project on the Elimination of Child Labour, helped to organize in Islamabad in November 1992 the Asian Regional Seminar on Children in Bondage, which developed and adopted A Programme of Action against Child Bondage. The groups of children targeted by the Programme include:

Children pledged in part payment of a debt;

Children "recruited" for work on plantations;

Children lured away from their families, kidnapped or confined in sweatshops or brothels;

Children compelled to work in conditions of exploitation which have no resemblance to a free employment relationship, as is sometimes the case with children working unseen in domestic service. 18/

57. The Programme of Action against Child Bondage advocates the following measures:

"(a) Legislation

Review the adequacy of existing legislation. In particular, the following aspects should be covered:

Definition (the various forms of bondage)

Objective (its total abolition)

Specification of sanctions

Compensation of victims

Liquidation of debts and other obligations

Enforcement machinery, e.g. measures for a speedy trial

Enabling provisions for the establishment of special courts

Adverse publicity for violators

Establishment of rehabilitation schemes

"Enforcement

Establish mechanisms to promote and monitor enforcement, e.g. vigilance committees, task forces

Strengthen the judiciary

Provide appropriate penalties to deter violations

Publicize violations

Complement legal machinery with public awareness campaigns and the dissemination of information

Provide information and training for targeted groups, e.g. officials of implementing authorities, the judiciary, trade unions, religious groups

Conduct research and studies

"Education, training and rehabilitation

Make primary education universal, compulsory and free

Facilitate access to schooling through allocation of additional resources

Provide incentives to parents to send their children to school

Allocate greater resources to education

Promote public awareness of the value of education

Implement child labour and compulsory education laws

Establish rehabilitation programmes including counselling services

Provide non-formal education, vocational training, credit facilities and social services

Establish transit and rehabilitation centres

Develop a code of good practice for employers

Promote and implement prevention, prohibition and rehabilitation programmes

"Advocacy and community mobilization

Adopt a policy to eliminate bonded labour

Develop advocacy and social mobilization campaigns using the media, training programmes, investigative studies, etc.

Mobilize specific groups, including employers and workers and their organizations, parents, government, judiciary, community groups, social and political institutions, through targeted information campaigns

Establish networks among concerned groups." 19/

58. In 1993 the Committee on the Rights of the Child issued a statement highlighting many of these issues. It emphasized, in particular, the need for an international effort to make school education a real and effective alternative to exploitative child labour, and called for States to abide by international standards, particularly those set by ILO Conventions. 20/

59. The various recommendations found in the earlier reports of the Special Rapporteur complement many of the measures referred to in these recently adopted Programmes of Action and in other statements, and the task ahead will be to ensure broad-based implementation.

2. National developments

60. Laws prohibiting or regulating child labour, with variations in the age of employment and the types of work allowed, can be found in all parts of the globe. However, law enforcement in this area is weak, and it tends to cover only the formal sector. Rampant child labour exploitation is found in both developing and developed countries, although the developing countries have higher figures. The ILO annual World Labour Report documents the global nature of child labour exploitation in both developing and developed countries.

61. Interestingly, it is becoming increasingly evident that developed countries also have a large child worker population. Italy probably has the highest numbers in Europe. A survey in the United Kingdom revealed some 40 per cent of the children questioned to be working, the majority illegally. 21/ The United States has a substantial child labour workforce:

> "In the United States the majority of child workers are employed in agriculture and a high proportion of these are from immigrant families ... And many children are employed in everything from farms to fast food stores to garment factories. A 1990 study by the General Accounting Office showed a 250 per cent increase in child labour law violations from 1983 to 1990. And a 'sting' operation carried out by the United States Department of Labor during three days in 1990 found more than 11,000 children working illegally." 22/

62. The issue of child labour exploitation recurred in all parts of the globe in 1993. South Asia was a particular case in point. In India, despite laws prohibiting children under 14 from working in hazardous industries, violations are widespread. They include transgressions in industries such as those producing matches, fireworks, glass and bricks, in diamond cutting and lock making, and in stone quarries. Accidents take their toll among children, and late in 1993 there was a campaign to stop the use of children in the fireworks industry, an industry prone to major accidents. Interestingly, the majority of children in these industries are from the scheduled castes and tribes, reflecting the socio-economic and cultural discrimination that relegates these groups to such forms of employment.

63. India has also witnessed a key movement to liberate people from bonded labour, which particularly affects the "untouchables". Non-governmental organizations have been instrumental in advocating their liberation, as well as in providing alternative training, occupation and rehabilitation. In 1993, child bonded labourers took part in a long march which captured the public imagination on the need for reform. The South Asian Coalition on Child Servitude, a non-governmental organization, has called for a national commission on bonded labour to fight against bonded labour.

64. There has also been an attempt to involve the private sector in countering child labour exploitation in India, for example by ensuring that carpets are produced by children and by attaching a "rugmark" to this effect. However, in 1994 there have been indications that some key producers were withdrawing support from the "rugmark" idea. Regrettably, there seems to be a weakening of

the peer pressure that the industry itself could have exerted against its more exploitative elements.

65. The issue of child marriages was raised several times during the year. 23/ This is linked to the phenomenon of men from the Gulf States coming to India in search of young brides. The customers then pay the parents for the girl brides. The problem has to be tackled from both the demand and supply sides; measures are needed on the part of Indian society and on that of the Gulf States. A communication was sent to the Saudi Arabian Government by the Special Rapporteur on the issue (see para. 192 (c) below).

66. The situation in Nepal has many similarities with the situation in India. Children are exploited in a number of activities. There is extensive cross-border trafficking of children into India for sexual and other purposes. In 1993, a communication was sent to the Government of India concerning the sale and trafficking of young girls, particularly from hill-tribe groups in Nepal, into India for sexual exploitation. There has been no reply.

67. The pattern is repeated in Bangladesh and Pakistan. The plight of various groups of children, including those involved in farm labour, the clothing industry, domestic service, child marriage and child prostitution, was noted during the year. Of particular concern is the dilemma of child domestic servants, as seen in this observation in respect of Bangladesh:

> "Girls between 6 and 14 are preferred - women cost more and might attract the men ... Girl servants are especially deprived as they are seldom let out of the house ... The girls are discharged at puberty and may end up in a brothel." 24/

As for child marriages in Bangladesh:

> "Poor girls without a trade or dowry are often taken as second wives by older men and kept in near slavery. If the first wife does not recognize the second marriage, it is not registered, and when the girl becomes pregnant, she can be abandoned without a legal remedy." 25/

The cross-frontier trafficking of Bangladeshi girls into Pakistan has led to a number of them being kept in jail as illegal immigrants.

68. In Pakistan, although there is a law against bonded labour, there is a problem concerning its enforcement:

> "No instance was reported in 1992 of any establishment being penalized for employing children in a category of occupation banned to them. On the other hand, reports abounded of their working in [the] carpet industry, chemical manufacturing, in ports and railways - all prohibited to them." 26/

69. In Sri Lanka, a large number of children are employed as domestic servants, and are at times sexually abused.

70. The demand factor concerning South Asian women is not only local but also transnational. The customers come from a variety of Gulf States and Middle Eastern countries, including Abu Dhabi, Bahrain, Dubai, Kuwait, Muscat, Oman, Saudi Arabia and United Arab Emirates.

71. In 1993 continuing concerns were expressed in regard to children sold for camel racing in the Gulf countries. The children tended to come from Bangladesh, India, Pakistan and Sri Lanka. However, in 1993 the United Arab Emirates issued a law banning the use of child jockeys, and ordered all child camel jockeys to return home. There are fears that implementation of the new law is weak and that there are distortions concerning the weight of the young camel drivers. The children will need to be assisted to return home and to benefit from social rehabilitation.

72. In East Asia, there are continuing reports of the sale and trafficking of children, both local and transnational. Cambodian, Chinese and Lao children and children from Myanmar are trafficked into neighbouring Thailand for exploitation of their labour. Malaysia has a number of children working in its plantations, 27/ while Indonesian children are employed in various industries including the garment, electronics, glass, mosquito repellant and food and farm products industries. 28/ The sex market looms large in Cambodia, China, Japan, Philippines, Thailand and Viet Nam.

73. In Central and South America, the numbers of children at work are vast, especially as there is a large population of streetchildren. In Brazil, one of the most disturbing incidents during the year was the killing of streetchildren. The Special Rapporteur communicated directly with the Brazilian Government, and the Government replied that various measures were being taken to address the situation. Violence against streetchildren was also reported in Colombia, Guatemala and Mexico. The situation in Colombia is doubly worrying because children are at times used by drug traffickers to sell drugs and/or are recruited as hired killers ("sicarios").

74. The issue of child domestic workers concerns many countries, including Bolivia, Brazil, Colombia, Costa Rica and Peru; most of these children are unprotected by law or other measures. As noted by one observer:

> "Countries have been extremely slow to enact legislation to protect the adult domestic worker, let alone the child domestic worker. Domestic work carries few regulations of hours or pay, and generally there is no access to social security benefits ... In the few countries where legislation does exist, employers find it easy to avoid as the women themselves are unaware of their rights. In Peru, where legislation does exist, only 15 per cent of domestic workers of all ages are registered with the social security programme." 29/

75. In 1993, there were continuing reports of entrapped Haitians forcibly used for labour in sugar cane plantations in the Dominican Republic, and children abused in the informal sector in Mexico. In Trinidad and Tobago, in one case a child was exploited for drug trafficking (cocaine) and was later whipped in accordance with the Code concerning Minors. Cuba's declining economic situation will also have repercussions for children who may be subjected to economic

exploitation. Schoolchildren are sometimes used in exploitative work situations, out of school hours, particularly in the farming sector.

76. In Africa, reports were received during the year concerning the exploitation of child labour in the informal sector in many countries, including Zaire, and domestic service in a variety of countries. Girl children from rural areas, used in domestic service in urban areas in Benin, Ghana, Guinea, Guinea-Bissau, Senegal, Sierra Leone and Togo are particularly vulnerable. 30/ In Côte d'Ivoire, the sale of children for labour has been documented as follows:

> "They all came from the same area, the north-eastern part of Côte d'Ivoire and the north-west and south of neighbouring Ghana. There are therefore Ghanaian networks and Ivorian networks. These are characterised by a bipolar system consisting of a rural base, purveyor of child labour, and an urban target, the consumer of child labour. The two are linked together by intermediaries." 31/

77. In 1993, slavery was reported in Mauritania, despite laws abolishing it. The situation is aggravated by the fact that descendants of slaves are reclaimed by the master after the parents' death. In Burkina Faso, the situation of children in the informal sector, including domestic service, remains serious, and there have been several instances of forced marriages. In Sudan, there are continual reports of forced labour and slavery of children, particularly among those of certain ethnic groups. The Special Rapporteur communicated with the Government of Sudan on this issue in 1993. There has been no substantive reply.

78. In West Africa, the use of children for begging has been cited consistently in 1994 by both governmental and non-governmental sources. In some cases it is linked to various religious teachers who manipulate children to collect money for them. The issue is related to the flow of children from poor rural families to urban areas, and the disintegration of families, which pushes children out of the home and into exploitative situations.

79. European countries were faced with child labour exploitation on various fronts in 1993. In Hungary, there is a high level of juvenile crime and this is linked with streetchildren. Children are also used for various purposes by the Mafia in Italy, while the plight of overseas domestic workers in the United Kingdom is to be noted. The pressures on young athletes also came to light, particularly in regard to the "doping" of young athletes in former East Germany before German reunification.

80. One of the most worrying scenarios is that in the Russian Federation where a large number of children are used as instruments of crime. As noted by the Government of the Russian Federation in a submission to the Working Group on Slavery of the Subcommission on Prevention of Discrimination and Protection of Minorities in 1994:

> "... the worsening problems of finding socially useful employment for minors are having a highly unfavourable effect on the crime rate among adolescents. Over the past five years, the number of minors who are not working anywhere, who are not studying, and who have committed crimes has almost trebled.

"The number of recorded crimes committed by minors increased by 15.5 per cent in the past year alone. At the same time, the criminal population among minors is growing younger. In 1988-1992 the number of adolescents aged 14 to 15 years involved in crime increased by 55 per cent. Furthermore, every third adolescent who has broken the law lives in a family in which the parents abuse alcohol, do not attend to the children's upbringing and do not control the children's conduct." 32/

81. In the United States, at the end of 1992 it was reported that Burger King had settled charges concerning child labour exploitation by paying a large fine as a consequence of allegations concerning violations of hours of work for teenagers under 16 years of age. 33/

82. On another front, in 1994 there was an issue concerning a non-governmental organization which had placed advertisements to "buy" children out of employment situations by offering financial inducements to employers to liberate the children. In the opinion of the Special Rapporteur, this practice should be shunned as it may lead to extortion and further forms of exploitation by unscrupulous employers and intermediaries.

83. The incidents of child labour exploitation that have occurred on all continents during the past year indicate the universal nature of the problem, which requires concerted, interdisciplinary action to tackle it.

C. Organ transplantation

84. The issue of children sold for organ transplantation remains the most sensitive aspect of the Special Rapporteur's mandate. The sensitivity of the issue was highlighted in 1994 when, regrettably, various United States nationals were attacked in Guatemala owing to unfounded rumours concerning the trafficking of children for organ transplantation.

85. A balanced perspective is called for in regard to this issue. It is submitted by the Special Rapporteur that while evidence abounds concerning a trade in adult organs in various parts of the globe, the search for proof concerning a trade in children's organs poses more difficulties and a greater challenge. It should be noted that during the Special Rapporteur's mission to Nepal in 1993, the Nepali police informed him of a recent case concerning a child and an adolescent trafficked into India for this illicit purpose. There is mounting evidence of a market for the sale of children's organs.

1. International developments

86. Although there is no international instrument on the issue of human organ transplantation, the implication of the Convention on the Rights of the Child, which protects children's right to life and freedom from abuse and exploitation, is that the sale of children for organ transplants is totally illegal.

87. In 1991 the World Health Organization (WHO) issued a set of Guiding Principles on Human Organ Transplantation spelling out the conditions of consent required in the case of organ removal from cadavers. 34/ In regard to children's organs, the prohibition is almost absolute (Principle 4):

> "No organ should be removed from the body of a living minor for the purpose of transplantation. Exceptions may be made under national law in the case of regenerative tissues."

There are also key stipulations against commercialization (Principle 5):

> "The human body and its parts cannot be the subject of commercial transactions. Accordingly, giving or receiving payment (including any compensation or reward) for organs should be prohibited."

88. In 1993, the European Parliament passed a resolution prohibiting trade in transplant organs, 35/ noting in its Preamble that:

> "J. ... there is evidence that foetuses, children and adults in some developing countries have been mutilated and others murdered with the aim of obtaining transplant organs for export to rich countries",

it continued as follows:

> "1. Calls on the Council to take measures to prohibit commercial trade in organs throughout the (European) Community territory.
>
> "2. Calls for a ban on imports, use and/or transplant of organs and tissues whose origins and state of health is not known with certainty.
>
> "3. Calls on the Commission to condemn the laxness of certain countries which allow such trafficking to develop.
>
> "4. Calls for action to be taken to put a stop to the mutilation and murder of foetuses, children and adults in certain developing countries for the purpose of providing transplant organs.
>
> "5. Calls on the Commission to draw up a code of conduct comprising:
>
> (a) Conditions governing the origin of transplant organs,
>
> (b) The principle that organs should be donated free of charge and that donors should remain anonymous to the recipient,
>
> (c) The principle that no supplementary payment specific to the medical act of transplanting organs should be made,
>
> (d) A system of:
>
> 1. Approval of hospital departments responsible for transplants;

2. Separation of intensive care units from surgical units responsible for transplants;

(e) A ban on the removal of organs of minors, from adults who are legally incapable, and from anencephalic infants;

(f) The establishment of medical criteria for placing patients on waiting lists, including in the following order: (1) medical urgency; (2) the possibility of guaranteeing transplant patients a reasonable post-operative existence; (3) histocompatibility; (4) length of time on the waiting list; the list should be circulated solely within medical circles;

(g) The right of patients to information about possibilities of organ transplants appropriate to their state of health."

89. The measures proposed for European cooperation in this resolution passed by the European Parliament could be a lesson for other parts of the world. They include the following:

"(a) Computerisation of data on available organs, patients awaiting transplants and parameters for ensuring histocompatibility, for example extension of the Eurocomputerlink system;

"(b) Stepping up of European cooperation among non-profit-making associations responsible for gathering such data;

"(c) Settlement of the costs arising from the removal of organs, proper treatment and where applicable, transport to be based on the principle that the cost is payable by the recipients of the transplants or by their health and social security schemes;

"(d) Maximum use of live donors belonging to the family for kidney transplants;

"(e) Continuation and intensification of scientific research into artificial organs and xenografts;

"(f) Cooperation between national health services responsible for organ transplants, with special emphasis on the importance of establishing specialised services in those countries which do not yet have them so as to avoid international transportation of patients awaiting transplants, which always leads to trauma;

"(g) Launching of public awareness campaigns, particularly among the young, based upon the principle of generosity and solidarity, with due regard for the individual person and individual feelings;

"(h) Efficient hospital records and the introduction of an effective transplant programme between central and outlying hospitals." 36/

90. The Council of Europe is now progressing towards drafting a protocol on organ transplantation. Other interlinked draft instruments are a convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine, and a bioethics convention.

2. National developments

91. Many countries and areas have moved in recent years towards passing legislation to regulate organ transplantation, and to prohibit the use of children's organs. Three recent cases are of note: India, the Philippines and the Russian Federation. Others, such as Bulgaria, Hong Kong, Israel and Poland are preparing legislation on the issue. In the United States, the 1984 National Organ Transplant Act prohibits the sale of human organs. Moreover, the United Network for Organ Sharing (UNOS) supervises the allocation of organs for transplantation in the United States, and importation of organs from other countries into the United States is only permitted from UNOS-recognized sources. It is hoped that in future UNOS can monitor more comprehensively situations where United States nationals seek organ transplantations outside the country.

92. However, the situation at the national level is often nebulous. In the 1993 report of the Special Rapporteur to the Commission on Human Rights (E/CN.4/1993/67), it was noted that the non-governmental sector had made allegations concerning various incidents in Argentina, Brazil, Colombia and Peru. Since then, the Special Rapporteur has contacted the Governments concerned for additional information and clarification. Some Governments have not responded, while others have provided limited explanations.

93. In a reply to the Special Rapporteur's request for information the Government of Colombia commented on the subject of the sale of children's organs as follows:

> "There is no information in our country concerning this unlawful activity. When private individuals have denounced such practices through unofficial channels at the national and international level, the State has requested through the Colombian Institute of Family Welfare that an investigation should be made; the outcome of the investigation has been that the truth of the accusations could not be established beyond doubt."

94. In 1993, there were further allegations concerning Brazil in regard to a trade in children for adoption in Europe (see para. 40 above), with implications of the sale of organs. Earlier in the year, the matter had been taken up by INTERPOL, which made the following comment to the Subcommission on Prevention of Discrimination and Protection of Minorities:

> "During the past few years the press in a number of countries have suggested that children are being adopted in certain developing countries, the sole purpose being to use their organs in transplant surgery. This subject has been also mentioned at various conferences hosted by the United Nations and attended by representatives of the General Secretariat and by non-governmental organizations specializing in the welfare of children.

Until quite recently, no concrete evidence or specific case has come to the attention of the General Secretariat.

"At the request of the National Central Bureau of Brazil, the General Secretariat has been asked to draw this matter to the attention of member countries and, in particular, to request that the topic be included in the work programme and also be considered by the General Assembly." 37/

95. During 1993, the Special Rapporteur also communicated directly with the Governments of Peru and Honduras concerning new allegations. To date, the Government of Peru has failed to reply to the communication, while the Government of Honduras has denied the allegations. Interestingly, by contrast, during his mission to Nepal, the police reported to the Special Rapporteur an incident concerning trafficking of children from Nepal to India for the purpose of organ transplantation.

96. In 1993 the need to focus on additional areas became apparent. In a report to the European Parliament, the issue of organ sale in the European community was raised, with implications for children:

"In the European Community countries the shortage of organs from dead donors could result in organs being imported from third countries. Whether or not money changed hands, we believe that this would be wrong for both moral and health reasons. The donated organs would come from countries which had not yet reached our level of prosperity. Again, organs would be removed from people whose living conditions and health were not the best." 38/

This highlights the "pull factor" of developed countries, which can afford to buy organs from developing countries, thereby regrettably contributing to a transnational market.

97. Greater monitoring of the demand and supply sides is required, and close collaboration with INTERPOL and other organizations dealing with crime is needed in the following countries and areas, inter alia:

(i) Central and South America, including Argentina, Colombia, Guatemala, Honduras, Mexico and Peru;

(ii) Asia and the Middle East, including China, Hong Kong, India, Iraq, Jordan, Nepal, Pakistan, Taiwan (province of China), the Gulf countries, and the West Bank;

(iii) Europe, including Albania, Austria, Germany, Italy, Poland and Switzerland;

(iv) North America.

98. For the purpose of future monitoring, it is also necessary to identify more concretely actual and potential sale of children's organs, as distinct from the sale of adult organs; much of the documentation on the subject regrettably confuses the two categories and can result in misunderstanding.

D. Other forms of sale

99. This remaining category covers abductions, disappearances and kidnappings, on the one hand, and child soldiers, on the other hand.

100. There were various reports of kidnappings, abductions and disappearances in 1993 and 1994. Some may have been linked with illegal adoptions, child labour exploitation and organ transplants.

101. Central and South America were a key concern. Honduras was cited by several sources during the year as a major source of concern in regard to the disappearance of children, closely linked according to information received to illegal adoptions. For instance, dubious circumstances surround the support rendered by a foreign private agency to a Honduran centre assisting unmarried mothers and their children. The killing and disappearance of children have also been noted by the Committee on the Rights of the Child in regard to Peru. 39/ This may be connected with a Draconian new law which extends the crime of terrorism to cover adolescents.

102. In a letter to the Special Rapporteur, the Chilean authorities noted as follows:

> "... the National Service for Minors has become aware of the existence of certain 'gangs' of individuals whose pursuit is the abduction of minors, giving rise to situations which degenerate into forms of trafficking. However, situations of this kind exploit the gaps in the existing legislation, with the result that most of them constitute practices which, although immoral, are not illegal."

103. In Asia, there have been various reports of kidnappings and disappearances during the past year. In Indonesia, the police smashed a ring that was smuggling Indonesian women into Malaysia. 40/ According to information received, about a thousand adolescents are missing in Malaysia. Kidnappings and disappearances in Sri Lanka, Cambodia and Pakistan were reported throughout the year. In the middle of 1994, according to information received, there was a spate of abductions and murders of children in New Delhi, India, primarily for ransom. In China, a boy was kidnapped and sold into slavery in a distant province. 41/ He escaped and reached home by begging.

104. In the United States, the problem of missing children is widespread. In 1994, the National Centre for Missing and Exploited Children submitted the following information to the Special Rapporteur:

> "In May 1990, the US Department of Justice released a study reporting that in 1988 there were as many as
>
> 114,600 attempted abductions of children by non-family members;
>
> 4,600 abductions by non-family members reported to police;

300 abductions by non-family members where the children were gone for long periods of time or were murdered;

354,000 children abducted by family members;

450,700 children who ran away;

127,100 children who were abandoned;

438,200 children who were lost, injured, or otherwise missing." 42/

105. A video hotline has been set up to trace missing children in the United States.

106. In Europe, there were several occurrences of note during the year. In its reply to the Special Rapporteur's request for information, the Government of Croatia referred to various cases of abduction. This should be seen in the context of Eastern Europe as a new market for the trade and disappearances of children. In Western Europe, some 6,000 children are classified as missing, and disappearances of children are likely to increase with the abolition of internal frontiers in the European Union. 43/ There has therefore been a call for more countries to accede to the Hague Convention on the Civil Aspects of International Child Abduction (see para. 23 above). A legal instrument of the European Union on this matter may also be in the offing, which would

(a) Provide for procedures whereby court orders made in the case of abduction are automatically enforceable;

(b) Facilitate direct measures to return abducted children, but also avoid the problem of child abduction by means of preventive measures;

(c) Contain special provisions concerning access rights, even where the children are illegitimate;

(d) Give priority to procedures for the speedy return of children, with the member States bearing part of the responsibility;

(e) Limit as far as possible the causes of non-recognition and non-enforcement of decisions;

(f) Ensure that no charge is levied for the procedure;

(g) Improve and expedite cooperation between member States and the administrative bodies concerned. 44/

107. Apart from this regional initiative, bilateral and national initiatives should also be pursued. France has entered into a series of bilateral agreements with Egypt, Morocco, Portugal and Tunisia to prevent the abduction of children.

108. On another continent, the trafficking of children may also be linked to disappearances. In the reply by the Government of Mali to the Special

Rapporteur's request for information, it is stated that there is illicit trafficking of children between Mali, Côte d'Ivoire, Saudi Arabia and the United States. During 1993, the Special Rapporteur also addressed a communication to the Government of Uganda concerning the disappearance of a number of children, possibly destined for a Middle Eastern country. No reply has been received to date.

109. In regard to the issue of child soldiers, the problem is widespread and is found in many parts of the globe where there are armed conflicts. Part of the problem arises from the varying criteria concerning the age of recruitment or conscription of children. The official age in many countries varies between 15 and 18, but in practice much younger children are used as child soldiers.

110. A number of humanitarian law instruments touch upon the issue, including the 1977 Additional Protocols I and II to the Geneva Conventions of 1949. The Convention on the Rights of the Child contains the following provision, which is weaker than desired:

> "Article 38
>
> ...
>
> 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take part in hostilities.
>
> 3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into the armed forces. In recruiting among those persons who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest."

111. As stated in earlier reports submitted by the Special Rapporteur, the threshold age of 15 is too low and should be raised to 18 in accordance with the definition of the term "child" offered by the Convention. The Committee on the Rights of the Child has also favoured a higher age criterion in its call for a new instrument to protect children in situations of armed conflict. 45/ This was reiterated by the International Conference for the Protection of War Victims, held at Geneva in 1993, which called for the raising of the age criterion to 18. This was reiterated in 1993 by the International Conference for the Protection of War Victims, which called for the raising of the age criterion to 18. In October 1993 the Council of Delegates of the International Red Cross and Red Crescent Movement adopted a resolution in which it requested:

> "the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, in cooperation with the Henry Dunant Institute, to draw up and implement a Plan of Action for the Movement aimed at promoting the principle of non-recruitment and non-participation of children below the age of 18 in armed conflicts, and to take concrete action to protect and assist child victims of armed conflicts".

112. There is currently a draft Protocol on Involvement of Children in Armed Conflicts which advocates the age criterion for recruitment to be set at 18 so

as to prevent children under that age from being recruited. The recent Conference on the Rights of Children in Armed Conflict also adopted a declaration to this effect.

113. However, on the ground, the situation is must less reassuring. The activities of these children range from fighting to spying. As noted by one source, 46/ children are known to have been fighting in at least 24 wars in recent times: civil wars and conflicts in Angola, Afghanistan, Burma, Cambodia, Chad, Colombia, Guatemala, Liberia, Mozambique, Peru, Rwanda, Somalia, Sri Lanka, Tajikistan, Northern Ireland; liberation movements of the Kurds, Palestinians, Timorians, West Irians and West Saharans; and in international conflicts between Armenia and Azerbaijan, between Serbs, Croats and Muslims in Bosnia and Herzegovina and Croatia, and between Indians, Pakistanis and Kashmiris in Kashmir.

114. Girl children are reported to be fighting in El Salvador, Guatemala, Lebanon, Liberia, Mozambique, Palestine, Peru, the Philippines, Sri Lanka and Turkey.

115. The situation is all the more tragic because children are often forced to join the armed forces at gunpoint. For example, in the conflict in the former Yugoslavia. In some cases such as in Liberia and Somalia, where demobilization of children has been claimed, in practice many children are still used as soldiers. In other cases where the demobilization of children has begun, for example in Mozambique and Sierra Leone, the issue of rehabilitation has come to the fore, especially as many child soldiers suffer from physical and mental damage.

116. Demobilization and family-based or community-based rehabilitation is an urgent necessity for children in all the armed conflict situations noted above. In the case of children fleeing from recruitment, it is also imperative to grant them refugee status and offer them international protection.

II. CHILD PROSTITUTION

117. The working definition adopted under this mandate for the term "child prostitution" is "the sexual exploitation of a child for remuneration in cash or in kind, usually but not always organized by an intermediary (parent, family member, procurer, teacher, etc.)". This was the basis of the questionnaire on the sale of children circulated globally by the Special Rapporteur in 1991.

118. The problem has become highly internationalized, thereby requiring both international cooperation and solidarity. It is closely linked with the issue of child pornography, as the one may lead to the other.

International developments

119. There has been a long line of international instruments relating to slavery, trafficking and the exploitation of women and children. The most recent is the Convention on the Rights of the Child, which calls for measures against the inducement or coercion of a child to engage in any unlawful sexual activity, and against the exploitative use of children in prostitution (arts. 19 and 34).

120. In 1992 the Commission on Human Rights adopted the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography. Its strategies include the provision of more information, education, legal measures and law enforcement, social measures and development assistance, rehabilitation and reintegration, and international coordination to address the issue of child prostitution. The Programme of Action calls for effective legal and administrative measures to prevent trafficking and sale of children, and voices the following specific concerns:

> "47. Special attention should be paid to the problem of sex tourism. Legislative and other measures should be taken to prevent and combat sex tourism, both in the countries from which the customers come and those to which they go. Marketing tourism through the enticement of sex with children should be penalized on the same level as procurement.
>
> "48. The World Tourism Organization should be encouraged to convene an expert meeting designed to offer practical measures to combat tourism.
>
> "49. States with military bases or troops, stationed on foreign territory or not, should take all the necessary measures to prevent such military personnel from being involved in child prostitution. The same applies to other categories of public servants who for professional reasons are posted abroad.
>
> "50. Legislation should be adopted to prevent new forms of technology from being used for soliciting for child prostitution."

121. The Working Group on Contemporary Forms of Slavery has also prepared a draft programme of action for prevention of traffic in persons and the exploitation of the prostitution of others which, although it does not specifically concern children, has various strategies which can be promoted for their protection. These include information, social measures and development assistance, legal measures and law enforcement, rehabilitation and reintegration, and international coordination.

122. These programmes of action should be disseminated broadly and implemented comprehensively. Some Governments have already begun to react to the Programme of Action for the Prevention of the Sale of Children. The responses that they have sent to the United Nations have been rather legalistic; they should provide more details about implementation problems and actual case profiles.

123. Two other international developments in 1993-1994 deserve attention in relation to standard setting. First, in December 1993, the United Nations

adopted the Declaration on the Elimination of Violence against Women (resolution 48/104), which is also relevant to the plight of child victims of prostitution as it interrelates closely with violence and its impact on the girl child. The term "violence" is understood to cover physical, sexual and psychological violence, and the Declaration counters both traditional and modern practices which exploit women and the girl child for sexual and other purposes. The Declaration calls for a range of measures:

"Article 4

"States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women, and to this end, should:

...

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;

(e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

(f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation."

124. Second, the possibility of a draft optional protocol to the United Nations Convention on the Rights of the Child concerning the elimination of sexual exploitation and the trafficking of children is being discussed. The draft protocol recognizes such exploitation as a crime against humanity and calls for a variety of measures to prevent the practice.

125. In the opinion of the Special Rapporteur, this array of international instruments requires that great emphasis should be placed on their effective implementation at the national and local levels, as well as to address transnational issues of trafficking, while ensuring complementarity between all national and international mechanisms. Accessibility of remedies and access to and from the child victims themselves should be a key concern in the search for redress. Children's representatives, such as Ombudspersons, may be fostered in this regard.

126. On another front, the World Tourist Organization (WTO) drew the attention of the Working Group on Contemporary Forms of Slavery of the Subcommission in 1993 to the Tourism Bill of Rights and Tourist Code, adopted in 1985, which established standards of conduct for States, tourism professionals and tourists on the issue of sexual exploitation as follows:

> "(a) States are reminded of the need to prevent any possibility of using tourism to exploit others for prostitution purposes;
>
> "(b) Tourism professionals and suppliers of tourism and travel services are asked to refrain from encouraging the use of tourism for all forms of exploitation of others;
>
> "(c) Tourists themselves are requested to refrain from exploiting others for prostitution purposes." 47/

WTO does not feel that another expert meeting is necessary at this point in time.

127. The Special Rapporteur welcomes the growing involvement of INTERPOL in the fight against the sexual exploitation of minors. INTERPOL has established a Standing Working Party on Offences against Minors, and in its reply to the Special Rapporteur's request for information it indicated that a series of measures were being taken on this issue, including dissemination of the Programme of Action for the Prevention of the Sale of Children to national bureaux and requesting member countries to appoint specialist liaison officers on offences against minors.

128. INTERPOL also supports many of the recommendations made by the Special Rapporteur in his report to the Commission on Human Rights in 1993, for example the promotion of a "pro-child-anti-crime network" and training for quality law enforcement personnel.

129. The Standing Working Party met in 1993 and set up subgroups to examine the following:

(a) Law enforcement; legislation:

(i) Child pornography and child prostitution;

(ii) International cooperation; liaison network; legislation and application of laws;

(iii) Sex tourism; international adoption;

(b) General measures:

(i) Victim assistance; police structure; missing children; free telephone help-lines; prevention models;

(ii) Training;

(iii) Research - statistics.

130. In 1994 the Standing Working Party again met and placed great emphasis on the training of police personnel to address child-related issues, as well as to deal with the trauma faced by many police officers in their work. The framework for future cooperation in this area will include the appointment of contact agents in member countries; the preparation of a report on child pornography, including a study of national laws; the compilation of reference material on computer pornography; increased sharing of information via contact agents, especially on the movements of paedophiles; contacts to counter sex tourism; the collection of information about national laws on child prostitution; the collection of statistics on offences against children, standardization of the forms used for this purpose, and desegregation of statistics by gender and age group; the training of police on human rights and victim assistance; the compilation of information on victim assistance; legislative measures and regulations on prevention models. This is an auspicious development, as the availability of information on the sale of children depends very much upon cooperation from law enforcement authorities.

National developments

131. The situation in 1993-1994 remained most disturbing, and there was a close linkage between the internationalization of child prostitution and child pornography. Equally distressing was the spread of HIV/AIDS among children world wide, including child victims of prostitution. This should be seen in the light of earlier reports submitted by the Special Rapporteur in which it was noted that the market of child sexual exploitation was spiralling towards the very young, especially as some customers believed that by resorting to sexual relations with a child they could prevent themselves becoming infested with HIV/AIDS.

132. Eastern Europe has emerged as a new market in the sexual exploitation of children. The case of children sold for prostitution in Russia was well covered by the international press. 48/ In neighbouring countries, the menace is omnipresent. For instance, in its reply to the Special Rapporteur's request

for information, the Government of the Czech Republic observed that child prostitution was growing and was often linked with the Romany population. It affected girls as young as 11. The problem also affects Poland, where a bill to criminalize the acts of those who sexually exploit children under 15 years of age is pending.

133. In Western Europe, the problem is more serious than is apparent at first glance. As noted in the report of France to the Committee on the Rights of the Child:

> "In 1988, a vast campaign was launched to prevent sexual maltreatment, aimed at pornography and prostitution but above all at incest and paedophilia. The results of the campaign, published in 1992, clearly show a failure to recognize the extent of the problem." 49/

French paedophiles are known to be operating in other parts of the world, such as in Thailand.

134. During the year, the Special Rapporteur communicated with the Swiss authorities concerning allegations against various Swiss nationals. These involved the trafficking and sexual exploitation of children both within and outside the country. In their reply, the Swiss authorities stated that action was being taken against the accused. One person was in preventive detention in Switzerland and legal proceedings were pending. Two other Swiss nationals had been arrested in the Netherlands and extradition was being sought.

135. In the Netherlands, child prostitution takes many forms, for example, local children, the children of migrant workers, and children trafficked from Central and South America, Africa and Asia. In a reply from the Netherlands authorities to the Special Rapporteur, it was noted that that Criminal Code had been amended in 1991 so as to protect not only all girls under 12 but also all persons under 12 from child victimization through prostitution.

136. In Belgium, a "flesh trade", exploiting young women from developing countries, for example the Philippines, and from Eastern European countries, came to light in 1993. At times the girls are trafficked and raped in the process.

137. The problem has also emerged in the United Kingdom. It is both local and transnational. British paedophiles are known to seek their victims in other parts of the world, such as South-East Asia. However, the authorities are now considering a law to criminalize the marketing of sex tours.

138. The issue of forced prostitution in Turkey has been highlighted by the non-governmental sector. Although the cases tend to concern adult prostitutes, one cannot rule out the possibility of child victims, especially as some identity documents are known to be false.

139. The Nordic countries have been increasingly affected by the acts of their paedophiles operating in developing countries. A case in point was the Swedish national caught in flagrante delicto sexually exploiting a child in Thailand during the past year. Although his passport was confiscated, he managed to

acquire a new passport, and subsequently jumped bail and fled back to Sweden. Although Swedish law allows prosecution of its nationals for crimes committed outside the country, such prosecution is unlikely unless the child's age can be proved to the satisfaction of the Swedish authorities. This raises issues of both procedure and substance. The case is now pending.

140. Subsequently a Swedish police liaison officer was appointed to monitor the situation in South-East Asia.

141. Norway has also moved against child sexual exploitation. A special police unit is being set up to deal with this issue and to assist local police. The private sector has stepped in to help, thereby highlighting the importance of peer group pressure: the Norwegian Travel Business Association has decided to refuse admission to sex tour operators and is initiating a campaign against sex tourism. At times, the courts have also stepped in, even when the crime takes place outside Norway; in 1990, three Norwegian men were sentenced for sexually exploiting 13-year-olds in the Philippines and Thailand.

142. Germany has taken similar action, as a number of German tourists have been involved in the sexual exploitation of children in other countries. Previously the German Penal Code applied to the actions of Germans abroad only if both perpetrator and victim were German nationals. It has now been amended to make prosecution possible even if the victim is not a German national. In effect, it extends German law extraterritorially to cover the acts of German nationals abroad in relation to the sexual abuse of children where the victims are not German.

143. The situation in North America is equally disturbing, and is linked with the phenomenon of street children and child pornography. Child prostitution is rife in both Canada and the United States. A recent report on female prostitution in the United States notes the following:

> "Young people are sometimes branded or tattooed denoting 'ownership' by the pimp. The customers also physically abuse juvenile prostitutes. Incidents of rape, stabbing, threats of violence are not unusual. An increase in the number of juveniles being offered large sums of money to perform acts of sado-masochism as been recognized. Many young street prostitutes have been offered money to perform in amateur pornographic videos." 50/

144. In Central and South America, sexual exploitation of children is widespread and it is often linked with the millions of street children there. In recent reports submitted by Bolivia and Mexico to the Committee on the Rights of the Child, sexual exploitation of children was referred to, although in less detail than desired.

145. The situation of child prostitution in Asia remains serious with large numbers of children victimized by the trade. The extent of the problem in Thailand, for example, is well known. It is doubly worrying because of the huge numbers with HIV/AIDS, particularly in the prostitution sector. The Government has set the eradication of child prostitution in the country as a high priority. Two draft laws should, when adopted, afford greater protection to children: the

draft law concerning the sale and trafficking of women and children and the draft law concerning the prevention and control of prostitution. These draft laws seek to provide protection to children based upon a higher age threshold, namely 18 years of age, and to punish customers and procurers more severely. It is also envisaged that conspiracy for the purpose of sexual exploitation will become an offence.

146. However, the real situation is more disillusioning. Thailand was in the headlines on many occasions during the year not only in regard to local child prostitution but also cross-frontier trafficking of women and children from Cambodia, China, Laos and Myanmar; and the Special Rapporteur was in communication with the Thai Government in regard to girls from Myanmar trafficked into prostitution in Thailand. The Government replied that various measures were being taken to counter the trade.

147. During the year, there were allegations that a girl from Myanmar was shot in Thailand after being sold into prostitution. The Thai authorities are invited to pay close attention to this issue and to take expeditious action to see that justice is done. Moreover, there were additional reports that a number of Burmese girls sent back from Thailand after being lured into prostitution in Thailand were subsequently imprisoned by the Government of Myanmar. If this is the case, the girls should be released immediately and accorded protection and assistance for rehabilitation, based upon respect for human dignity and human rights. International monitoring is also required and the Special Rapporteur on the situation of human rights in Myanmar is invited to examine the issue.

148. Several incidents occurred in Thailand in 1994 which had tragic consequences. Police raids discovered many instances of abuse and exploitation of child victims in central and southern Thailand. In one case, a girl victim died due to poison while in police custody after escaping from a brothel in southern Thailand. Many new reprehensible acts have also been identified on the part of child traffickers, for example, falsifying identification cards so as to classify children as adults; sending children home temporarily during police raids but forcing them back to brothels afterwards; using new facilities such as karaoke bars to sell children. Corruption and collusion among various law enforcement authorities are widespread and pervasive.

149. A number of foreign paedophiles were arrested in Thailand during the year. An Australian paedophile was apprehended not only for sexually exploiting children but also for sacrilege; he had placed a Buddha image in a sacrilegious position on a girl's body.

150. Russian women were also found to be involved in prostitution in Thailand. Children may have been part of this group, as the possibility of false passports which classify children as adults should not be ruled out. At times there were also reports of linkage between trafficking for prostitution and narco-trafficking, especially through Hong Kong.

151. Apart from local prostitution in Malaysia, Malaysian tourists are known to visit southern Thailand for sexual services. In the Government of Malaysia's reply to the Special Rapporteur's request for information, it is interesting to note the various anti-crime measures it is taking, such as community awareness

campaigns and neighbourhood programmes, as well as new policies and laws to protect women and children. These include the 1991 Child Protection Act and the 1993 Women and Girls Protection Act, which protect women and girls from exposure to prostitution.

152. The problem of child prostitution increasingly affects other South-East Asian countries. In 1993 a court in Laos sentenced a man and a woman to prison for selling a young girl to a businessman in Thailand. In Cambodia there were recurrent complaints against United Nations peace-keepers for indulging in the sexual exploitation of local girls. A survey cited by the mass media in 1994 suggests that a high proportion of all prostitutes in Cambodia have been sold into prostitution. 51/ Parents, neighbours, friends and relatives were identified as instrumental in selling children into sexual exploitation. Abductions and disappearances linked with this trade were also reported. HIV/AIDS is spreading rapidly.

153. In neighbouring Viet Nam, the sex trade has grown markedly; many of its victims are children under 16 years of age. There is also cross-border trafficking of girls between Viet Nam and China. Meanwhile, China has witnessed an upsurge in local child prostitution. Many women and children are sold clandestinely as slaves, and child prostitution in big cities such as Shanghai is on the rise.

154. In Taiwan (province of China), child prostitution is also rampant. The authorities proposed recently to re-educate the clients of child victims of prostitution as a new measure to counter the demand factor.

155. Although the Philippines is known to have a large population of child victims of prostitution, 1992 witnessed the adoption of an innovative law to protect children, namely the Republic Act (RA) 7610, which promotes stronger measures against those who victimize children for sexual purposes and who traffic children. A number of foreign paedophiles, including Australian syndicates, are known to prey on children in the country and abuse children for sexual purposes and for pornography.

156. In South Asia, the situation remains disturbing. Child prostitution is interwoven with the extensive exploitation of child labour and the presence of numerous street children in the region. Apart from local children found in prostitution, the trafficking of children for sexual purposes across frontiers is rampant between many South Asian countries, for example, Nepal-India, Bangladesh-India, Bangladesh-Pakistan, Pakistan-India. During the year, the Special Rapporteur communicated with the Indian Government concerning the trafficking of Tamang girls from Nepal into India. No reply has been received to date.

157. In the middle of 1994, a sex racket was exposed in Bombay, which included politicians and industrialists. The racket had used girls for sexual purposes and had videotaped the girls' sexual acts so as to blackmail them into luring others into the racket. It also involved the rape of young persons for this purpose.

158. Sri Lanka's child prostitution problem has been the subject of new initiatives, such as a clamp-down on foreign paedophiles. The police have called for the age of consent to be raised from 12 to 16 years of age, as this would accord more protection to children against sexual exploitation.

159. The countries of South Asia are faced not only with new forms of child exploitation, such as foreign paedophiles who come to the region in the globalization process, but also with the remnants of negative cultural traditions. In various countries, children, particularly girls, are given to temples to become "goddesses", and eventually fall into prostitution, despite laws prohibiting the practice. These cultural traditions need to be countered not only by laws but also by a community-based socialization and education process to counter these practices and to promote the rights of women and the girl child who are most often the victims of this paternalistic past.

160. Discrimination based upon race and social origin aggravates the issue. For instance, it is clear that in several settings, it is the children of minorities and indigenous peoples who are first and foremost the victims of the trade. This again calls for not only a law-based approach but also interdisciplinary action to eradicate the vestiges of discrimination in the region.

161. East Asia is facing new challenges of child exploitation despite an economic boom. The increasing breakdown of the family system in the Republic of Korea and Japan acts as a push factor to drive children from the home and into sexual exploitation. Japan's position is anomalous for the reason that many Japanese visit South-East Asia as sex tourists. Moreover, there is a trade of women and girls from South-East Asia to Japan, connected with the Yakuza syndicate, which has a hand in many illegal trades in Japan. The unfortunate consequences of their enslavement are sometimes torture and death.

162. In Africa, the problem of child prostitution is becoming more widespread. The issue affects all the countries mentioned earlier in the current report in regard to the exploitation of child labour. Sexual exploitation is often intermingled with the informal sector, street life and domestic service. The increasing number of street children lends itself to the possibility of more child prostitution, and the equally worrying spread of HIV/AIDS. During the year, information was received of a growing problem of child prostitution in Zaire. In Gambia, European women are known to use the sexual services of young local men. There is also trafficking of young boys and girls from Mozambique to South Africa for sexual exploitation. This is at times linked with the refugee situation, and highlights the fact that refugee children are vulnerable to the sex trade, whether in Africa or elsewhere.

163. Mozambique provided an additional case study during the year on the role of United Nations peace-keepers. There were complaints that they had sought the services of prostitutes, including child victims of prostitution. This raises a concern for the United Nations in regard to the need for guidelines and training so as to prevent peace-keepers from aggravating the child prostitution problem.

164. Finally, perhaps the most interesting innovation during the year related to Australia. Several Australians were apprehended abroad for sexually exploiting children, and this propelled the authorities to pass a new law to extend the

scope of Australian criminal law to cover the misdeeds of its nationals abroad. This exemplified the trend towards "extraterritoriality", whereby its nationals can be incriminated for acts committed against children in other countries. As noted by the Australian authorities:

> "The Commonwealth's preferred approach is to establish two main offences. The first offence will be directed at prescribed sexual offences against children under the age of 16. Setting the age at 16 reflects the age applicable in most Australian jurisdictions. The second offence will be framed in terms of an aggravated sexual offence, and will apply to sexual relations with children under the age of 12. Double criminality, which may be a requirement of mutual assistance, will be present in relation to the younger age group, though it may not always be present for the age group 12 to 16." 52/

165. New Zealand is now considering a law parallel to this.

166. On analysis, there are not only substantive difficulties concerning the nature of the offence and the age criterion, but also procedural difficulties. How to obtain the evidence from a child who is in another country? This may depend on formal or informal mutual assistance agreements between the countries concerned and cooperation between law enforcement personnel. Meanwhile, videotaping the child's testimony or using satellite communications for such testimony may also be possible. This may be strengthened by extradition agreements between the countries affected.

167. While this extraterritorial extension of national laws may be subject to various substantive and procedural obstacles, it is a welcome step towards promoting accountability and responsibility with respect to transnational sexual exploitation of children.

III. CHILD PORNOGRAPHY

168. The working definition of "child pornography" adopted by this mandate is "the visual or audio depiction of a child for the sexual gratification of the user, and involves the production, distribution and/or use of such material". This was used as the basis of a questionnaire circulated to Member States in 1991. To this definition should be added pornographic performances.

169. Child pornography has become increasingly transnational, and is interwoven with child prostitution. The advent of new technology raises many questions regarding the efficacy of existing laws on the subject. Equally important is the issue of consumer liability; some jurisdictions do not criminalize the possession of child pornography, while others do.

International developments

170. The Convention on the Rights of the Child voices the need for measures against the exploitative use of children in pornographic performances and materials (arts. 19 and 34). The Programme of Action for the Prevention of the

Sale of Children, Child Prostitution and Child Pornography further emphasizes the need for more information, education, legal measures, reintegration and international coordination. On the issue of child pornography, certain measures are underlined:

> "52. Law enforcement agencies, and social and other services should place a higher priority on the investigation of child pornography in order to prevent and eliminate any exploitation of children.
>
> "53. States that have not yet done so are urged to enact legislation making it a crime to produce, distribute or possess material involving children.
>
> "54. Where required, new legislation and penalties should be introduced for the mass media which broadcast or publish material threatening the psychic or moral integrity of children or containing unhealthy or pornographic descriptions and to prevent new technology being used to produce pornography, including video films and pornographic computer games.
>
> "55. States should be encouraged to protect children from exposure to adult pornography, especially through new forms of technology, by adopting suitable legislation and appropriate measure of control."

171. The references to the positions of the World Tourism Organization and INTERPOL in the earlier section on child prostitution in the present report are also pertinent to child pornography, as is the trend towards "extraterritoriality" whereby persons can be incriminated for offences committed in other countries, to protect children from victimization.

National developments

172. There are major child pornography markets in North America and Europe. In many instances, paedophiles from countries of these regions visit developing countries and victimize children for the purposes of pornography. Videotapes and photographs are often the means used for doing so, and pornography is linked to victimization through prostitution. During the year, several paedophiles (men and women, and at times couples) from these regions were apprehended in South-East Asia.

173. The extent of child pornography in Europe was well illustrated during the year by allegations against Germany and Switzerland; the Special Rapporteur communicated with the authorities in these countries in regard to alleged misconduct of their nationals who had used children for pornographic purposes. Although the German authorities denied that some of the materials cited in the communication were tantamount to child pornography, they admitted in their reply:

> "The Federal Government knows that children are being abused for pornographic photographic magazines and video films. Some of these photographs and videos are produced privately, often by members of the

child's own family, and exchanged with other consumers of child pornography; others are produced on a commercial basis and rented out or sold. Many of these films and photos are made with children from the third world, either in the Federal Republic of Germany or in their native countries. The Federal Government utterly condemns this deplorable state of affairs. The universal protection of children is therefore an overriding concern of the Federal Government. The 27th Act amending the Penal Code, which seeks to combat more effectively child pornography and so-called child sex tourism, entered into force in 1 September 1993 with a view to improving the protection of children against sexual abuse."

174. It should be added that German law was reformed in 1993 so that the upper limit for the legal protection of minors under the Penal Code has been set at 14 years, and a new offence has been established, namely that of being in possession of child pornography. This also has extraterritorial application. Various cases are also pending against Germans accused of exploiting children for pornography in Hanover and Frankfurt.

175. In regard to child pornography, two Swiss nationals were recently prosecuted in the Netherlands for torture and attempted murder of at least two young children and sexual abuse of a child, as well as use of children for the production of pornographic videos. After being sentenced by a court in Amsterdam, the two nationals are now being sought by the Swiss authorities, by means of extradition, to answer further charges in Switzerland.

176. Many countries have now moved to criminalize not only the production and distribution of child pornography but also its possession. One source documents the various country positions concerning the possession issue as follows: 53/

Austria	Legal, but the law is about to be amended
Belgium	Legal
Canada	Illegal
Denmark	Legal
Finland	Legal
France	Legal
Germany	Illegal
Netherlands	Legal but the law is possibly about to be amended
Norway	Illegal
Sweden	Legal
Switzerland	Illegal
United Kingdom	Illegal
United States	Illegal

177. In the reply of the Government of the United Kingdom to the Special Rapporteur's request for information, it is indicated that some child pornography is circulated among small groups of paedophiles. As for commercial pornography, "the police and customs consider that the Netherlands remains the single most significant source of child pornography imported into this country, although a lesser amount originates from Germany, Spain and USA." Now that it is an offence to possess child pornography in the United Kingdom, the police have also established an informal national register of paedophiles and intelligence relating to child pornography. However, the official stand is not yet favourable to extraterritorial application of the law.

178. Eastern Europe also poses a challenge for the future. For example, during 1993 there was a report that a Swiss national was enroling children in Hungary for the German market.

179. In Northern Europe, the market is particularly visible in the Nordic countries, and this is linked with paedophiles who visit developing countries and victimize children.

180. In a reply of the Holy See to the Special Rapporteur's request for information, emphasis is placed on the role of the family and the need to counter pornography.

181. North America has long been a major child pornography market. A source in the United States provides the following statistics for 1993: 25 indictments, 31 arrests, 39 convictions, 1 acquittal, 1 dismissal, 3 nolle prosequi, 84 seizures. 54/ A major problem now is computer-linked pornography, such as the computer bulletin board system (BBS):

> "A BBS uses the common telephone service, a personal computer, a modern and appropriate communications software, to electronically send child pornography from one computer to another. The child pornography is produced by using digitising and scanning equipment to turn child pornography magazines, pictures or photos onto a computerized picture on a hard or floppy disk." 55/

182. A major source of misuse of BBS for this purpose is Denmark. United States customs have also found the following other sources: the Netherlands, Norway, Sweden and Switzerland. Stronger laws and law enforcement against computerized pornography are required, as well as closer international cooperation to counter the practice.

183. On a related front, Canada's recent legislative amendment to criminalize the possession of child pornography is welcome.

184. The problem also affects other parts of the world. Australian paedophiles are known to indulge in similar practices, and the Government's new law to extend criminal jurisdiction to cover the misdeeds of its nationals abroad should also cover child pornography. In 1993, an Australian teacher of religion was fined in Brisbane for importing child pornography involving a Filipino child. Another case concerning an Australian paedophile was pending in

Thailand. In 1994, New Zealand police were looking for a New Zealand passport holder who was alleging compiling a reference directory for paedophiles.

185. Asia has long been known as both a supply and demand market. However, there has been recent law reform on the subject. As noted above, the Philippines recently amended its law to confer greater protection on children in this situation. Sri Lanka is aiming to establish a more specific offence concerning obscene publications and indecent shows, and to broaden its Children's Charter to protect those who are under 18 years of age.

186. Japan also needs to pay greater attention to its child pornography market. The problem is noted in the Government's reply to the Special Rapporteur's request for information as follows:

> "Recently the National Police Agency received a report that the manager of an adult shop cheated high school girl students skilfully, took videotapes of naked bodies and sexual activities of them and sold the tapes."

187. Other regions of the world were also affected during this period. For example, there was a report of child pornography in Israel, particularly pornographic videos sold in porn shops.

188. Two global trends to accord greater protection to children were of note: the criminalization of the possession of child pornography and action against computer-linked pornography.

IV. COMMUNICATIONS

189. During the course of each year the Special Rapporteur communicates directly with various Governments with regard to the issues under this mandate. These communications are prompted by reports concerning situations affecting children's rights that call for effective responses. The Special Rapporteur acts on the basis of prima facie evidence received from various sources. The cases presented involve individuals, groups and situations requiring attention and action on the part of the States concerned.

190. Each communication from the Special Rapporteur and each reply from the State concerned is documented at length in the annual report submitted by the Special Rapporteur to the United Nations Commission on Human Rights. It is not the intention of this report to replicate the texts of these communications here. However, various highlights will be provided to take stock of the trends perceived through these communications.

191. In his 1992 report (E/CN.4/1992/55) to the Commission, the Special Rapporteur referred to a communication with Pakistan on behalf of a young girl who had been kidnapped in Bangladesh and taken to Pakistan. Pakistan had replied that it was unable to trace the girl.

192. In the 1993 report (E/CN.4/1993/67) to the Commission, he referred to communications sent to and responses received from countries as follows:

(a) Communication with the Government of Austria concerning the alleged promotion by Lauda Air of sex tourism oriented towards paedophilia in Thailand. The Government of Austria replied to the communication with a denial stating that the company had not conducted a campaign to promote sex tourism.

(b) Communication with the Government of Germany concerning the alleged publication in Berlin of a periodical, entitled Spartacus, which contained passages attempting to facilitate paedophilia-centred sex tourism, child prostitution and child pornography. The Government of Germany replied to the communication with a denial, stating that the 1991/1992 publication did not reveal evidence pointing to sex tourism and child exploitation.

(c) Communication with the Government of Saudi Arabia concerning alleged trafficking in children from South Asia who were then used for camel racing. The Government of Saudi Arabia replied to the communication with a denial, stating that it was unacceptable to claim that young foreign boys were bought or hired for such purposes.

(d) Communication with the Government of Thailand concerning an allegation of the sexual exploitation of girls from Myanmar trafficked into Thailand. The Government of Thailand did not deny that this had taken place, but provided information concerning action to counter such exploitation.

(e) Communication with the Government of the United Arab Emirates concerning an allegation of the trafficking in children from South Asia who then were used for camel racing. The Government of the United Arab Emirates replied to the communication with a denial, stating that the sale and trafficking in children were prohibited in the country. However, after this denial, the country adopted a new law to regulate camel racing and to protect children from exploitation.

193. In the 1994 report (E/CN.4/1994/84) to the Commission, the Special Rapporteur referred to communications to responses received from countries as follows:

(a) Communication with the Government of Brazil concerning an allegation of exploitation of the labour of street children and abuse by law enforcement personnel, including killings of street children. The Government did not deny that this had taken place, but provided information on action to counter such practice.

(b) Communication with the Government of Germany concerning alleged sexual exploitation of children by German nationals, particularly in child pornography. The Government did not deny that this had taken place, but provided information on action to counter such practice.

(c) Communication with the Government of Honduras concerning an allegation of illegal organ transplants which may have involved the use of children. The Government replied to the communication with a denial, stating that the complaint was unfounded.

(d) Communication with the Government of India concerning an allegation of trafficking in children from Nepal, particularly Tamang children, for sexual exploitation. The Government has not replied.

(e) Communication with the Government of Peru concerning an allegation of illegal organ transplants involving children. The Government has not replied.

(f) Communication with the Government of Saudi Arabia concerning an alleged illegal marriage between a Saudi national and a young Indian child. The Government has not replied.

(g) Communication with the Government of the Sudan concerning alleged abductions of children, such as those of the Dinka community. The Government requested more time to reply, but has not given a substantive reply.

(h) Communication with the Government of Switzerland concerning allegations of misconduct by Swiss nationals in the sexual exploitation of children. The Government did not deny that this had taken place, but provided information on action to counter such practice.

(i) Communication with the Government of Thailand concerning allegations of trafficking and sexual exploitation of girls from Myanmar. The Government did not deny that this had taken place, but provided information on action to counter such practice.

(j) Communication with the Government of Uganda concerning the alleged disappearance of children bound for the Middle East. The Government has not replied.

194. It is disconcerting that several Governments have failed to reply to the communications. The Special Rapporteur would welcome an effective and expeditious response from the concerned authorities. This is all the more important because many lives are at stake, and efficacious action is required to protect all children, irrespective of social or other origin, from abuse and exploitation. Particular attention should be paid to the spirit of the Convention on the Rights of the Child and the Programme of Action for the Prevention of Sale of Children, with regard to taking adequate preventive action and providing relevant remedies.

V. ADVISORY OPINION

195. In 1994, upon their request, the Special Rapporteur began to provide advice to national authorities on matters of concern to his mandate, in the hope that this would provide constructive inputs for legislative reform and other action to protect children at the international, national and local levels.

196. In particular, the Swedish Children's Ombudsman requested advice as follows (excerpts):

> "The issue of making the possession of child pornography a criminal offence has been central to the discussion of children's rights in Sweden

for some time. Under current regulations, only the production and circulation of child pornography are prohibited. The public debate has been intense and the question of new legislation will be decided in the coming weeks ...

"The background to the Swedish debate is a report into measures against sexual assault, among other things, presented by the Swedish Ministry of Justice on 31 October 1993. After approximately a year of study, the authors of the report concluded that the possession of child pornography should not be made a criminal offence. This stance met with strong objections from several quarters when circulated for consideration, not only from children's rights organizations and others, but also from high-ranking police officials and public prosecutors. Both the Child Public Prosecutor and the National Swedish Police Board advocate making the possession of child pornography a criminal offence, arguing among other things that it would enhance the possibility of effective police intervention to counteract the trade in child pornography.

"The urgency of the issue increased sharply when, in the course of their investigations, Swedish police accidentally came across a substantial quantity of films, including some containing child pornography ...

"The Swedish Government has reconsidered the matter and devised two alternative proposals, one of which entails making the possession of child pornography a criminal offence. The other proposal only gives the possibility of confiscating child pornography, not to make its possession criminal.

"In Sweden, however, this issue is complicated by our very strong - and to Swedes, deeply rooted - traditions of the freedom of the press and freedom of speech. Both of the aforementioned governmental proposals thus mean that the Constitution must be altered, which requires two decisions by the Swedish Parliament with an election between them. Moreover, a proposed alteration in the Constitution must be presented to Parliament at least nine months before the next election and that time has already elapsed, as there will be a general election in Sweden this September ...

"I would appreciate it if the Special Rapporteur could give his views on the need for making the possession of child pornography a criminal offence. Such a statement would help to bolster the work of this office to cultivate opinion on this matter."

197. Consequently, the Special Rapporteur advised the Swedish Children's Ombudsman as follows (excerpt):

"Increasingly, the international position favours the criminalization of possession of child pornography.

"In 1992, the Commission on Human Rights adopted the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, with the following stipulation: '53. States that have not yet done so are urged to enact legislation making it a crime to

produce, distribute or possess pornographic material involving children'. (Emphasis added)

"In my report to the Commission on Human Rights, and in my capacity as Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, I have consistently emphasized the need to criminalize possession of child pornography. This is partly due to the need to tackle the 'demand' factor whereby customers of child pornography contribute to the proliferation of child pornography world wide. It does not suffice to tackle the 'supply', we must also address the 'demand' factor of which possession of child pornography is a key component.

"The issue of possession of child pornography should not be seen as overlapping with freedom of expression. There is no inconsistency between freedom of expression and the criminalization of possession of child pornography, as possession of child pornography is detrimental to the development of the child, while freedom of expression cannot be interpreted to derogate from the rignts of the child and the child's freedom from exploitation and abuse.

"The obligation to protect children from such exploitation is clearly encompassed and advocated by the International Convention on the Rights of the Child to which your country is a State Party.

"I would urge you strongly to consider the possibility of introducing laws, policies and other measures to promote the rights of the child in keeping with the Convention noted. The criminalization of possession of child pornography would be in keeping with the global trend whereby States are increasingly reforming laws, policies and practices so as to ensure that the 'demand' factor is addressed, in addition to the 'supply' factor, in regard to child pornography."

VI. RECOMMENDATIONS

A. General

(1) The Special Rapporteur has made a number of recommendations to the Commission on Human Rights during the period of his mandate, and the United Nations General Assembly is invited to bear them in mind so as to encourage more concrete action and responses at the international, national and local levels. In particular, the recommendations in the 1994 report submitted to the Commission (E/CN.4/1994/84) should be noted and given support by the General Assembly, with a view to their effective and expeditious implementation and evaluation at the international, national and local levels.

(2) The General Assembly should encourage all States, national and international organizations, and other entities to provide updated information on all areas of concern to this mandate to the Special Rapporteur. Particular attention should be paid to the interrelationship between child rights, women's rights and the concerns of the family and the girl child. Data should be disaggregated so as to reflect gender and other disparities. Each State should

identify and/or establish a national focal point for collecting such information and liaising effectively with the Special Rapporteur. Networking between Governments, non-governmental organizations, the community, the business sector, the family and children on these matters should be fostered and facilitated.

(3) The General Assembly should support the possibility of more field visits under this mandate to both developing and developed countries in order to make the work of the United Nations more accessible to people at the local level and to reflect their views in the recommendations to the United Nations. While a visit to Africa is planned in 1994, a visit to North America would be welcomed by the Special Rapporteur in the future, and the States of this region are invited to collaborate closely with the Special Rapporteur and facilitate his access to relevant information.

(4) The General Assembly should encourage all States to respond effectively and expeditiously to communications from the Special Rapporteur on behalf of children in difficulties. They should also initiate independent and objective monitoring at the national level to complement the work of the Special Rapporteur.

(5) The General Assembly should call upon all States to accede to all the relevant human rights instruments and implement them efficaciously. In particular, they should accede to the Convention on the Rights on the Child and should enforce it fully at the national and local levels. The national focal point mentioned above should gather information on areas of relevance to these instruments and should forward it regularly to the international human rights mechanisms, including the Special Rapporteur, mandated to deal with child-related issues.

(6) The General Assembly should invite the Secretary-General of the United Nations and the United Nations Security Council to address issues of child abuse and exploitation, as these may have an impact on international peace and security, especially since many forms of child abuse and exploitation are transnational and global by nature. Conversely, the problems facing international peace and security have numerous repercussions for children, since they may be detrimental to the children's survival, development, protection and participation. Children's rights should be seen as a key concern of international peace and security, and protection and assistance targeted to children and their families should be seen as key components of human security.

(7) The General Assembly should exert constructive influence on world financial institutions, especially the World Bank and the International Monetary Fund, to reappraise structural adjustment programmes and to ensure that these do not lead to negative consequences for children, especially child abuse and exploitation. These institutions should initiate and apply "family-and-child impact assessment" tests to all programmes under their mandate so as to prevent and attenuate child abuse and exploitation.

(8) The General Assembly should call upon the Secretary-General of the United Nations and all United Nations peace-keeping operations to pay greater attention to the rights of the child, with relevant training and retraining on this issue for peace-keepers. A code of conduct on child rights in United Nations peace-

keeping operations should be drafted and adopted so as to prevent United Nations personnel from becoming involved in child abuse and exploitation.

(9) The General Assembly should ensure that all United Nations agencies incorporate the concerns of children and their families in their programmes. All these agencies should collect and collate information on child rights, especially with regard to the sale of children, child prostitution and child pornography, and report annually to the General Assembly, as well to the Special Rapporteur and other concerned entities. Particular attention should be paid to the interrelationship between the rights of women and children, especially the girl child. Data should be disaggregated accordingly.

(10) The General Assembly should reinforce the work of the Committee on the Rights of the Child, UNICEF and relevant entities in protecting and assisting children and their families. Adequate resources should be provided to the Centre for Human Rights and the mandate of this Special Rapporteur to fulfil the broad functions already designated and to facilitate effective implementation of their mandates.

(11) The General Assembly should foster the work of UNESCO, global and national media, and other concerned entities to disseminate information on child rights and to educate government officials, especially law enforcement personnel, the community, non-governmental organizations, the private sector, the family, and children themselves about issues of child abuse and exploitation. This is imperative to overcome negative cultural traditions which perpetuate child exploitation, particularly those which violate the rights of women and the girl child. A sustained community and family socialization, mobilization and education process is required to overcome those traditions, as well as more modern forms of child abuse and exploitation.

(12) The General Assembly should place greater emphasis on preventive strategies and action to counter child abuse and exploitation, particularly in the areas of concern to the Special Rapporteur's mandate. On the one hand, this entails more effective measures to address poverty and inadequate economic and livelihood opportunities as root causes of family disintegration and practices which lead to the sale of children, child prostitution and child pornography. On the other hand, it calls for more action, particularly through more quality law enforcement personnel and community networks and vigilance, to counter the criminal networks and the transnational demand for the sale of children, child prostitution and child pornography.

(13) The General Assembly should interact more closely with INTERPOL, the Crime Prevention and Criminal Justice Branch of the United Nations, UNICEF, ILO, WHO, the Commission on Human Rights and subsidiary bodies, and national authorities and other relevant entities to promote a "pro-child-anti-crime" network to tackle the pervasive criminal systems that exploit and abuse children world wide.

(14) The General Assembly should encourage all States, with the assistance of relevant United Nations and other bodies, to ensure that all law enforcement personnel are trained in child rights and issues of concern to this mandate. Special units may also be established to counter the sale of children, child

prostitution and child pornography, bearing in mind the need for more women than are found currently in police forces and other law enforcement personnel.

(15) The General Assembly should interact more closely with the private sector, particularly the business community and transnational corporations, so that it establishes a network on child protection to act as a monitor of the activities of businesses and prevent child abuse and exploitation. A "business code on child protection" should be evolved in this sector, with the encouragement of the General Assembly, in order to provide constructive peer pressure on the business community to respect the rights of the child.

(16) The General Assembly should invite all States, national and international organizations, and other concerned entities to operationalize efficaciously and expeditiously the various international standards espoused by the United Nations, and to implement effectively the recommendations of United Nations conferences and other relevant forums. In particular, the recommendations of the 1993 World Conference on Human Rights, contained in the Vienna Declaration and Programme of Action, the 1994 International Year of the Family, and the 1994 United Nations Conference on Population and Development need to be applied effectively, in keeping with the concerns of children and their families in the context of the rights of the child. Moreover, 1995 will witness the World Social Development Summit and the Fourth World Conference on Women which will be key avenues for highlighting the rights of the child, especially the rights of the girl child, and the need to counter both traditional and modern forms of child abuse and exploitation.

(17) The General Assembly should allocate, and invite all States and development aid agencies, whether multilateral, regional, bilateral or national, to allocate more resources to social development, especially the development of families and children. This should be posited in the context of children's rights, particularly the needs of the girl child. The past over-expenditure by States on arms purchases should be curbed and the savings from reduction of arms expenditure should be reallocated to assist and protect families and children as part of a global peace dividend.

(18) The General Assembly is invited to encourage the adoption and implementation of the following specific short-, medium- and long-term measures already proffered to the Commission on Human Rights by the Special Rapporteur in 1994.

B. Specific

1. Short-term measures

(19) The term "short-term measures" refers to measures which should preferably be implemented in the next five years. Many of the short-term measures suggested should also be part of medium- and long-term strategies; they are not mutually exclusive and should be seen as part of a continuing process.

(20) In the light of the 1994 International Year of the Family, the General Assembly should collaborate with all States and with national and international

organizations to highlight measures needed to promote a positive nexus between the child and the family, and to counter child abuse and exploitation. In the light of the 1994 United Nations Conference on Population and Development, the General Assembly should reinforce the recommendations of the Conference and advocate their effective and expeditious implementation by all States and other relevant entities, bearing in mind the essential interrelationship between the population issue, access to family planning, family needs, women's rights and the rights of the child, particularly the girl child.

(21) The General Assembly, States and national and international organizations should support and disseminate the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, and the Programme of Action for the Elimination of the Exploitation of Child Labour already adopted by the Commission on Human Rights and ensure that there is effective monitoring and implementation of these Programmes at all levels, with adequate resource allocations.

(22) The General Assembly, States and national and international organizations are invited to bear in mind strategies of prevention, protection and rehabilitation in curbing the sale of children, child prostitution and child pornography. All three strategies involve short-, medium- and long-term planning, implementation and evaluation. Of the three strategies, the most immediate, in the short term, is that of protection: adequate laws, policies and enforcement can have an instant impact on the situation, given the necessary political and social will. All countries already have laws which can be used to protect children, for example the criminal law; they should be implemented in a more committed manner. This is all the more significant because the scenario is that of criminality, and only through effective law enforcement will it be reduced in the short term. Realizable goals depend on close coordination and adequate budgetary allocations between the national and local levels.

(23) A key priority for action in the short term, with implications for the medium and long term, is in the area of prevention. The General Assembly, States and national and international organizations should promote effectively anti-poverty strategies, improved flow of information, universal primary education, community consciousness raising and mobilization, satisfaction of basic needs, occupational opportunities, alternative forms of employment, and subsidies for families and children in difficulties.

(24) As a root cause of the abuse and exploitation of children is criminality, the General Assembly, States and national and international organizations should broaden anti-crime measures. Community participation should be maximized to protect children through "community watch" programmes, including an alliance between village committees, other vigilance committees, religious leaders, local teachers and leaders, youth and child groups, professional organizations, non-governmental organizations, the business community and the mass media.

(25) The General Assembly, States and national and international organizations should address the issue of improving the quality of the police force, immigration authorities, judges, inspectors and other law enforcement personnel. Low pay and insufficient training in the rights of the child often result in poor law enforcement and corruption. The better among such officials need

incentives and in-service training for quality performance. The worst should be identified and penalized for being part of the criminal system.

(26) Increased collaboration between the General Assembly, the Committee on the Rights of the Child, the Commission on Human Rights, the Subcommission on the Prevention of Discrimination and Protection of Minorities, the Working Group on Contemporary Forms of Slavery, INTERPOL, the Crime Prevention Branch of the United Nations, the Centre for Human Rights and other relevant entities and this mandate is desired. As the Centre for Human Rights has no resources for the Special Rapporteur to attend several of the meetings held by these entities (for example, those of the Crime Prevention Branch), facilities should be provided to enable the Special Rapporteur to attend key meetings to coordinate with these entities, with adequate back-up support.

(27) The General Assembly, States and national and international organizations should highlight the responsibility of the customer in child abuse and exploitation through national and international campaigns. This implies, in particular, a call to incriminate customers of child victims of prostitution and those who possess child pornography.

(28) The General Assembly, States and national and international organizations should encourage, through bilateral and other means, exchange programmes among law enforcement personnel, as well as related training programmes, to deal with transnational trafficking in children. Such programmes may, for example, entail stationing police personnel in other countries to track the behaviour of one's own nationals where there is a threat to the children of those countries. This can be facilitated by increased exchange of information, such as lists of known paedophiles and crime-linked data.

(29) The General Assembly, States, and national and international organizations should facilitate the provision of remedies to help children who are abused and exploited. This may include judicial remedies such as prosecution of abusers, legal aid and assistance, and/or socio-medical remedies such as access to hospices, counselling and other support facilities. More assistance should be available and accessible to those with health problems, including HIV/AIDS. These may include medical and community facilities to help children and their families, as well as measures to protect against discrimination and other harm. Emphasis should be placed upon family-based and community-based rehabilitation rather than state institutionalization.

(30) In regard to adoptions, the General Assembly should encourage States' ratification of and accession to the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption. Both the countries of origin of adopted children and the receiving countries should become parties to this Convention and enforce it effectively. Accession to and implementation of the Hague Convention on the Civil Aspects of International Child Abduction by both the countries of origin of abducted children and receiving countries should also be strengthened.

(31) Where children are trafficked across frontiers, the General Assembly should encourage States and national and international organizations to ensure that the true age of the children is ascertained by independent and objective assessment,

preferably with the cooperation of the non-governmental sector. If they are to be returned to the country of origin, their safety must be guaranteed by independent monitoring and follow-up. Pending their return to the country of origin, they should not be treated as illegal migrants by the receiving countries, but should be dealt with humanely as special cases of humanitarian concern. Upon the children's return, the country of origin should treat them with respect and in accordance with international human rights principles, backed up by adequate family-based and community-based rehabilitation measures.

(32) The General Assembly, States and national and international organizations should work towards closer monitoring of organ transplantation in order to prevent abuses. National laws should prohibit the use of children for organ transplants, bearing in mind the World Health Organization Guiding Principles on Human Organ Transplantation referred to above. The medical sector and related professional organizations should be mobilized as a watchdog against abuses.

(33) The General Assembly, States and national and international organizations should discourage sex tourism, and the private sector, including the service industry, and the World Tourism Organization, should encourage accountability in this regard. Peer group pressure in the private sector may help to reprimand those in the same sector who are involved with child exploitation. A code of ethics might be promoted, stipulating the industry's stand against child exploitation.

(34) The General Assembly, States and national and international organizations should ensure that the issue of child prostitution and other forms of child abuse and exploitation is raised openly in the classroom, especially at the primary level, whether in formal or non-formal education, so as to forewarn children of the dangers.

(35) The General Assembly, States and national and international organizations should ensure that the age of recruitment into the armed forces is raised to 18 and that an international instrument is concretized to this effect. When child soldiers are captured in combat, their prisoner of war status must be respected. If they have escaped recruitment, they should be accorded refugee status and accorded international protection. Dialogue with the military of both governmental and non-governmental forces is needed to curb the use of child soldiers. In promoting adherence to international human rights and humanitarian law instruments, safeguards are needed for all children in situations of armed conflict.

(36) The General Assembly should encourage regional organizations, including the Council of Europe, the European Union, the Organization of American States, the Organization of African Unity, the Arab League, the South Asian Association for Regional Cooperation, and the Association of South-East Asian Nations, to set a specific agenda on child protection and establish a unit to monitor the abuse and exploitation of children as an urgent priority in their work. They are also requested to cooperate closely with the Special Rapporteur with respect to his mandate.

2. Medium- and long-term measures

(37) The term "medium- and long-term measures" is used to indicate those measures which may need more than five years to initiate and/or accomplish. Many of the short-term measures discussed above will also need to be continued in the medium and long term. If the medium- and long-term measures set out below could be initiated and/or accomplished in the short term, this would also be welcomed.

(38) The General Assembly should call upon States and national and international organizations to reappraise their development strategies so as to ensure greater equity, income distribution and resource allocations, including land reform and restructuring of budgets, for needy children and their families. As poverty is a root cause of child abuse and exploitation, it must be tackled with a sustained strategy in both national and international settings to ensure greater social justice for all.

(39) The General Assembly should encourage all States to establish central registries of all adopted children and of all missing children, and transfrontier exchanges of information should be promoted to trace and monitor the children and entities concerned.

(40) The General Assembly, States and national and international organizations should foster an integrated and interdisciplinary approach to tackle the root causes of the abuse and exploitation of children, bearing in mind the Programmes of Action referred to above. National laws need to be reformed to extend jurisdiction to cover the offences of a country's nationals against children in other countries in an extraterritorial manner.

(41) The General Assembly, States and national and international organizations should provide greater assistance to needy families and children in difficulties in order to lift them from the rut of poverty and economic deprivation which drive children into various forms of exploitation. Monitoring of parental behaviour, supervision by social service personnel, access to occupational facilities, provision of family care and child subsidies, and universal access to education and (re)training are required to encourage changes of behaviour on the part of parents and to protect children.

(42) The General Assembly, States and national and international organizations should ensure that laws and policies cover not only formal employment but also less formal types of employment which give rise to child labour exploitation, for example, in the area of agriculture, domestic service and subcontracting, and that they are implemented effectively. A sustained strategy with not only legal but also other measures is required to eradicate bonded labour.

(43) The General Assembly, States and national and international organizations should address the fact that new laws may be needed to counter new forms of technology used for child exploitation. Peer group pressure in the computer industry and the mass media could also be fostered as a watchdog against abuse by members of these sectors. Those who provide services in developing films, processing videos and facilitating mass communications should be requested to report instances of child exploitation to the law enforcement authorities.

(44) The General Assembly should call upon the business sector, including employers' federations, trade unions and the service industry, to promote a worldwide strategy for child protection. As already mentioned, a "business code on child protection" may also be evolved.

(45) As child abuse and exploitation are increasingly transnational, the General Assembly should encourage States to expand extradition arrangements, mutual assistance agreements and less formal types of inter-State cooperation so as to facilitate the transfer of alleged criminals to face charges in the country where the abuse or exploitation has taken place and to facilitate the giving of testimony by children in a child-friendly setting.

(46) The General Assembly should call upon States and national and international organizations to ensure that that there are effective laws, policies and a medical code of ethics to prevent commercialization of in vitro fertilization and surrogacy. The close cooperation of the medical sector is sought to establish rules for these practices. Bilateral and transfrontier arrangements are needed to prevent "forum shopping" for services which give rise to abuses.

(47) The General Assembly, States and national and international organizations should foster changes to traditions which perpetuate child exploitation, not only through legislative enactments but also through establishing a broader socialization and education process targeted towards consciousness raising and behavioural changes. A key concern is to eradicate violations of women's rights and abuses of the rights of the child, particularly the girl child.

(48) The General Assembly, States and national and international organizations should promote a reorientation of incentives from the past emphasis on "economic investment" for industries to the more urgent call of "social investment" targeted towards the development of the child and the family. In this respect, incentives, such as tax exemptions, should be accorded more broadly to non-governmental organizations and community initiatives that invest in the livelihood of the community and the family and in child survival, development, protection and participation.

Notes

1/ India West (29 November 1992).

2/ Child Asia, 9 (1993), p. 7.

3/ A/CONF.157/23, Part I, para. 21.

4/ N. Cantwell, "Will it work?", International Children's Rights Monitor, 10 (1993) 3, p. 23.

5/ Ibid., p. 26.

6/ Komsomolskaya Pravda, No. 38 (20338), (18 February 1992); USA Today (2 October 1993), p. 7A.

7/ International Children's Rights Monitor, 11 (1994) 1, p. 15.

8/ D. Ngabonziza, "Intercountry adoption: The need for professional services and measures of protection", Regional Seminar for East and Central Europe (Geneva, DCI, ICCB, ISS and UNICEF, 1992), p. 71.

9/ "Joint mission of DCI" Defence for Children International, International Children's Rights Monitor, 10 (1993) 3, p. 15.

10/ C. Bonnet, "The silence of Croatia's children", ibid., pp. 12-15.

11/ Source: The Sexually Abused Children: We Care, Geneva (20 December 1992).

12/ CRC/C/3/Add.15, paras. 294, 299, 301.

13/ International Children's Rights Monitor, 10 (1993) 3, p. 20.

14/ Bangkok Post (22 September 1993), p. 12.

15/ E/CN.4/Sub.2/AC.2/1993/8, para. 8.

16/ Bangkok Post (16 November 1993), p. 13.

17/ Spectrum Sunday Morning Post (29 March 1992), p. 1.

18/ ILO, Children in Bondage: A Call for Action (Geneva, ILO, 1992).

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21/ ILO, World Labour Report 1992 (Geneva, ILO, 1992), pp. 13-14.

22/ Ibid.

23/ The Times of India (18 November 1992); Bangkok Post (11 November 1993), p. 8.

24/ M. Harrison, "Child Labour in Bangladesh", Anti-Slavery Reporter 1992/3 (London, Anti-Slavery International, 1992), p. 69.

25/ Ibid., p. 70.

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27/ "Plantation children in Malaysia", Child Workers in Asia, 9 (1993) 2, pp. 17-20.

28/ "Factory children in Indonesia", ibid., pp. 15-17.

29/ Statement of ICCB to the Committee on the Rights of the Child, Geneva, 4 October 1993.

30/ Anti-Slavery Reporter 1992/3, op. cit., p. 79, and following statement of Anti-Slavery International to the Working Group on Contemporary Forms of Slavery, Geneva, May 1993.

31/ Ibid., p. 89.

32/ E/CN.2/Sub.2/AC.2/1994/6, p. 51.

33/ International Herald Tribune (20 November 1992).

34/ WHO, Human Organ Transplantation (Geneva, WHO, 1992).

35/ Resolution of the European Parliament on prohibiting trade in transplant organs, Strasbourg, 14 September 1993.

36/ Ibid.

37/ E/CN.4/Sub.2/AC.2/1993/5, p. 10.

38/ L. Schwartzenberg, Report on Prohibiting Trade in Transplant Organs (Strasbourg, European Parliament, 1993); Document En/RR/223/223220.

39/ CRC/C/20, para. 61.

40/ The Nation (6 January 1993).

41/ Child Asia, 9 (1993), p. 8.

42/ The establishment of a centre similar to the United States National Center for Missing and Exploited Children as a clearing house for information is particularly useful and is recommended for all countries.

43/ Extracts of minutes of a meeting on 9 March 1993 (Resolution on abductions of children), European Parliament, Strasbourg, 9 March 1993, p. 2.

44/ Ibid., p. 6.

45/ CRC/C/16, annex VII.

46/ Quaker United Nations Office, Geneva (June 1993).

47/ E/CN.4/Sub.2/1993/31, para. 81.

48/ Time Magazine (21 June 1993), pp. 41-43.

49/ CRC/C/3/Add.15, para. 418.

50/ Female Juvenile Prostitution: Problem and Response (Washington: National Center for Missing and Exploited Children/US Department of Justice, 1992), p. V.

51/ Phnom Penh Post (25 March-7 April 1994), p. 5.

52/ "Options Paper: paedophile sex tours", paper submitted to the Special Rapporteur by the Human Rights Section, Department of Foreign Affairs (Canberra, 13 August 1993), p. 2.

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54/ Source: US Customs, 1993.

55/ Ibid.